26-1241-cv

United States Court of Appeals

for the

Second Circuit

RICHARD AGAG, MD,

Plaintiff-Appellee,

– v. –

CIGNA HEALTH AND LIFE INSURANCE COMPANY,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX
Volume 1 of 2 (Pages JA-1 to JA-228)

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APPEAL,CLOSED,EFILE

U.S. District Court
District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:25-cv-00498-SRU

Agag v. Cigna Health and Life Insurance Company
Assigned to: Judge Stefan R. Underhill
Demand: $143,000
Cause: 9:9 Motion to Confirm Arbitration Award

Date Filed: 03/27/2025
Date Terminated: 04/16/2026
Jury Demand: None
Nature of Suit: 896 Other Statutes: Arbitration
Jurisdiction: Federal Question

Plaintiff

Richard Agag
MD

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Date Filed	#	Docket Text
03/27/2025	1	COMPLAINT against CIGNA HEALTH AND LIFE INSURANCE COMPANY (Filing fee $405 receipt number ACTDC-8115157.), filed by RICHARD AGAG, MD. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Civil Cover Sheet)(Greenspan, James) (Entered: 03/27/2025)
03/27/2025		Request for Clerk to issue summons as to CIGNA HEALTH AND LIFE INSURANCE COMPANY. (Greenspan, James) (Entered: 03/27/2025)
03/27/2025	2	Disclosure Statement by RICHARD AGAG, MD. (Greenspan, James) (Entered: 03/27/2025)
03/27/2025	3	Notice: Pursuant to Federal Rule of Civil Procedure 7.1(b), a disclosure statement required under Rule 7.1(a) must be filed with a party's first appearance, pleading, petition, motion, response, or other request addressed to the Court and must be supplemented if any required information changes during the case. Signed by Clerk on 3/27/25.(Hushin, Z.) (Entered: 03/27/2025)
03/27/2025		CASE ASSIGNMENT: District Judge Stefan R. Underhill assigned to the case. If the District Judge issues an Order of Referral to a Magistrate Judge for any matter other than settlement, the matter will be referred to Magistrate Judge Robert A. Richardson. (Oliver, T.) (Entered: 03/28/2025)
03/27/2025	4	Order on Pretrial Deadlines: Amended Pleadings due by 5/27/2025 Discovery due by 9/26/2025 Dispositive Motions due by 10/31/2025 Signed by Clerk on 3/27/2025. (Oliver, T.) (Entered: 03/28/2025)
03/27/2025	5	ELECTRONIC FILING ORDER FOR COUNSEL - PLEASE ENSURE COMPLIANCE WITH COURTESY COPY REQUIREMENTS IN THIS ORDER Signed by Judge Stefan R. Underhill on 3/27/2025. (Oliver, T.) (Entered: 03/28/2025)
03/27/2025	6	Standing Protective Order Signed by Judge Stefan R. Underhill on 3/27/2025. (Oliver, T.) (Entered: 03/28/2025)
03/27/2025	7	Notice of Option to Consent to Magistrate Judge Jurisdiction. (Oliver, T.) (Entered: 03/28/2025)

03/28/2025	8	ELECTRONIC SUMMONS ISSUED in accordance with Fed. R. Civ. P. 4 and LR 4 as to *Cigna Health and Life Insurance Company* with answer to complaint due within *21* days. Attorney *James Greenspan* *Gottlieb and Greenspan, LLC* *17-17 Route 208, Suite 250* *Fair Lawn, NJ 07410*. (Oliver, T.) (Entered: 03/28/2025)
03/28/2025	9	NOTICE TO COUNSEL/SELF-REPRESENTED PARTIES : Counsel or self-represented parties initiating or removing this action are responsible for serving all parties with attached documents and copies of 4 Order on Pretrial Deadlines, 7 Notice of Option to Consent to Magistrate Judge Jurisdiction, 5 Electronic Filing Order, 2 Disclosure Statement filed by Richard Agag, 1 Complaint, filed by Richard Agag, 3 Notice re: Disclosure Statement, 6 Standing Protective Order Signed by Clerk on 3/28/2025. (Oliver, T.) (Entered: 03/28/2025)
04/15/2025	10	SUMMONS Returned Executed by Richard Agag. Cigna Health and Life Insurance Company served on 4/4/2025, answer due 4/25/2025. (Tesic, Svjetlana) (Entered: 04/15/2025)
04/25/2025	11	NOTICE of Appearance by Stephen R. Donat on behalf of Cigna Health and Life Insurance Company (Donat, Stephen) (Entered: 04/25/2025)
04/25/2025	12	MOTION for Extension of Time until May 27, 2025 *to* Respond to Plaintiff's Complaint 1 Complaint, by Cigna Health and Life Insurance Company. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Service)(Donat, Stephen) (Entered: 04/25/2025)
04/28/2025	13	ORDER granting 12 for Extension of Time until May 27, 2025 to Respond to Plaintiff's Complaint. Signed by Judge Stefan R. Underhill on 4/28/2025. (Markowitz, C) (Entered: 04/28/2025)
04/28/2025		Answer deadline updated for Cigna Health and Life Insurance Company to 5/27/2025. (Reis, J) (Entered: 04/29/2025)
05/09/2025	14	MOTION for Attorney(s) Svjetlana Tesic to be Admitted Pro Hac Vice (includes a request to waive the fee) by Richard Agag. Payment made: $200.00 Pay.gov Tracking ID: 27NTTA7E (Attachments: # 1 Cert of Good Standing)(Greenspan, James) Modified on 5/9/2025 to update payment information (Ruocco, M.). (Additional attachment(s) added on 5/12/2025: # 2 REPLACEMENT PDF) (Oliver, T.). (Entered: 05/09/2025)
05/12/2025	15	ORDER granting 14 Motion to Appear Pro Hac Vice for Attorney Svjetlana Tesic. Signed by Clerk on 5/12/2025. (Oliver, T.) (Entered: 05/12/2025)
05/22/2025	16	MOTION for Extension of Time until June 26, 2025 Respond to Plaintiff's Complaint 1 Complaint, by Cigna Health and Life Insurance Company. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Service)(Oks, Caroline) (Entered: 05/22/2025)
05/27/2025	17	ORDER granting 16 Motion for Extension of Time until June 26, 2025 Respond to Plaintiff's Complaint. Signed by Judge Stefan R. Underhill on 5/27/2025. (Markowitz, C) (Entered: 05/27/2025)
05/27/2025		Answer deadline updated for Cigna Health and Life Insurance Company to 6/26/2025. (Markowitz, C) (Entered: 05/27/2025)
06/24/2025	18	MOTION for Extension of Time until July 28, 2025 to Respond to Plaintiff's Complaint 1 Complaint, by Cigna Health and Life Insurance Company. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Service)(Oks, Caroline) (Entered: 06/24/2025)

06/26/2025	19	ORDER granting 18 MOTION for Extension of Time until July 28, 2025 to Respond to Plaintiff's Complaint. Signed by Judge Stefan R. Underhill on 6/26/2025. (Markowitz, C) (Entered: 06/26/2025)
06/26/2025		Answer deadline updated for Cigna Health and Life Insurance Company to 7/28/2025. (Reis, J) (Entered: 06/26/2025)
07/21/2025	20	MOTION for Extension of Time until August 27, 2025 to Respond to Plaintiff's Complaint 1 Complaint, by Cigna Health and Life Insurance Company. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Service)(Oks, Caroline) (Entered: 07/21/2025)
07/22/2025	21	ORDER granting 20 Motion for Extension of Time until August 27, 2025 to Respond to Plaintiff's Complaint. Signed by Judge Stefan R. Underhill on 7/22/2025. (Markowitz, C) (Entered: 07/22/2025)
07/22/2025		Answer deadline updated for Cigna Health and Life Insurance Company to 8/27/2025. (Reis, J) (Entered: 07/23/2025)
08/01/2025	22	NOTICE of Appearance by Clifford Alexander Merin on behalf of Richard Agag (Merin, Clifford) (Entered: 08/01/2025)
08/25/2025	23	MOTION for Extension of Time until September 26, 2025 Respond to Plaintiff's Complaint 1 Complaint, by Cigna Health and Life Insurance Company. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Service)(Oks, Caroline) (Entered: 08/25/2025)
08/27/2025	24	ORDER granting 23 Motion for Extension of Time until September 26, 2025 Respond to Plaintiff's 1 Complaint. Signed by Judge Stefan R. Underhill on 8/27/2025. (Kilburn, M) (Entered: 08/27/2025)
08/27/2025		Answer deadline updated for Cigna Health and Life Insurance Company to 9/26/2025. (Kilburn, M) (Entered: 08/27/2025)
09/26/2025	25	MOTION to Dismiss *Complaint* by Cigna Health and Life Insurance Company.Responses due by 10/17/2025 (Attachments: # 1 Memorandum in Support, # 2 Text of Proposed Order, # 3 Certificate of Service)(Oks, Caroline) (Entered: 09/26/2025)
09/30/2025	26	MOTION for Attorney(s) Ryan P. Goodwin to be Admitted Pro Hac Vice (paid $200 PHV fee; receipt number ACTDC-8351318) by Cigna Health and Life Insurance Company. (Attachments: # 1 Certificate of Good Standing)(Oks, Caroline) (Entered: 09/30/2025)
10/01/2025	27	ORDER granting 26 Motion to Appear Pro Hac Vice for Attorney Ryan P. Goodwin. Signed by Clerk on 10/1/2025. (Oliver, T.) (Entered: 10/01/2025)
10/03/2025	28	NOTICE of Appearance by Ryan Patrick Goodwin on behalf of Cigna Health and Life Insurance Company (Goodwin, Ryan) (Entered: 10/03/2025)
10/07/2025	29	MOTION for Extension of Time to File Response/Reply as to 25 MOTION to Dismiss *Complaint* until 11/7/2025 by Richard Agag. (Merin, Clifford) (Entered: 10/07/2025)
10/09/2025	30	ORDER granting 29 Motion for Extension of Time to File Response/Reply as to 25 Motion to Dismiss Complaint until 11/7/2025. Signed by Judge Stefan R. Underhill on 10/9/2025. (Kahlon, S) (Entered: 10/09/2025)

10/30/2025	31	Second MOTION for Extension of Time until 11/21/2025 Opposition to Def's MTD by Richard Agag. (Merin, Clifford) (Entered: 10/30/2025)
11/03/2025	32	ORDER granting Plaintiff's 31 Motion for Extension of Time until 11/21/2025 to file opposition to Defendants' 25 Motion to Dismiss. Signed by Judge Stefan R. Underhill on 11/3/2025. (Kahlon, S) (Entered: 11/03/2025)
11/21/2025	33	Cross MOTION for Summary Judgment, Cross MOTION to Confirm, and Memorandum in Opposition re 25 MOTION to Dismiss *Complaint* filed by Richard Agag. (Attachments: # 1 Supplement Notice of Cross Motion SJ, # 2 Supplement Notice of CROSS MOTION to Confirm, # 3 Affidavit Affidavit of Plaintiff, # 4 Exhibit Exhibits to Complaint, # 5 Affidavit Certification of James Greenspan, Esq., # 6 Statement of Material Facts Rule 56 Statement, # 7 Text of Proposed Order Proposed Orders, # 8 Supplement Certification of Service)(Merin, Clifford) Modified on 3/30/2026 to correct event types and docket text (Reis, J) (Entered: 11/21/2025)
12/03/2025	34	MOTION for Extension of Time to File Response/Reply as to 25 MOTION to Dismiss *Complaint* until January 12, 2026 by Cigna Health and Life Insurance Company. (Oks, Caroline) (Entered: 12/03/2025)
12/04/2025	35	ORDER granting 34 Motion for Extension of Time to File Response/Reply to 33 Memorandum in Opposition and Cross Motions to Confirm and for Summary Judgment re 25 MOTION to Dismiss Complaint. Responses due by 1/12/2026. Signed by Judge Stefan R. Underhill on 12/4/2025. (Kahlon, S) (Entered: 12/04/2025)
01/12/2026	36	REPLY to Response to 25 MOTION to Dismiss *Complaint and in Opposition to Plaintiff's Cross-Motions to Confirm and for Summary Judgment [ECF No. 33]* filed by Cigna Health and Life Insurance Company. (Attachments: # 1 Statement of Material Facts in Opposition to Summary Judgment, # 2 Affidavit Declaration of Jose Farias, # 3 Exhibit A - Summary Plan Description, # 4 Exhibit B - Explanation of Benefits, # 5 Exhibit C - Summary Plan Description, # 6 Exhibit D - Explanation of Benefits) (Oks, Caroline) (Entered: 01/12/2026)
01/20/2026	37	MOTION for Extension of Time until 02/16/2026 Reply to D's Opp to Motion to Confirm and SJ by Richard Agag. (Merin, Clifford) (Entered: 01/20/2026)
01/22/2026	38	ORDER granting Plaintiff's 37 Motion for Extension of Time until 2/16/2026 to file reply to Defendant's 36 Opposition to Plaintiff's 33 Motion to Confirm and for Summary Judgment. Signed by Judge Stefan R. Underhill on 1/22/2026. (Kahlon, S) (Entered: 01/22/2026)
02/16/2026	39	REPLY to Response to 25 MOTION to Dismiss *Complaint REPLY to Def.'s Opposition to Plaintiff's Cross-Motion to Confirm and/or for Summary Judgment* filed by Richard Agag. (Attachments: # 1 Exhibit Exhibits to Complaint)(Merin, Clifford) (Entered: 02/16/2026)
03/31/2026	40	NOTICE OF E-FILED CALENDAR re: Defendant's 25 Motion to Dismiss and Plaintiff's 33 Cross-Motion to Confirm. THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. A Motion Hearing set for 4/17/2026 at 01:00 PM in Courtroom One, 915 Lafayette Blvd., Bridgeport, CT before Judge Stefan R. Underhill. (Kahlon, S) (Entered: 03/31/2026)
04/03/2026	41	Notice of Additional Authority re 25 MOTION to Dismiss *Complaint*, 33 MOTION for Summary Judgment filed by Cigna Health and Life Insurance Company. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6,

		# 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13)(Oks, Caroline) (Entered: 04/03/2026)
04/15/2026	42	NOTICE by Richard Agag *of Supplemental Authority* (Attachments: # 1 Supplement Case Attached)(Merin, Clifford) (Entered: 04/15/2026)
04/15/2026	43	ORDER. For the reasons set forth in the attached order, Defendant's 25 Motion to Dismiss is GRANTED with regard to Agag's request to confirm the IDR awards under Section 9 of the FAA and his request for damages under the NSA, but DENIED otherwise. Agag's 33 Cross-Motion to Confirm is GRANTED. The Clerk is directed to enter judgment confirming the IDR awards in the amount of $142,567.99 for Agag and against Cigna. Post-judgment interest shall accrue from the date of the entry of the judgment. The Clerk shall close this case. Signed by Judge Stefan R. Underhill on 4/15/2026. (Kahlon, S) (Main Document 43 replaced on 4/16/2026) (Reis, J). (Entered: 04/15/2026)
04/15/2026	44	ORDER denying as moot Agag's 33 Cross-Motion for Summary Judgment. Signed by Judge Stefan R. Underhill on 4/15/2026. (Kahlon, S) (Entered: 04/15/2026)
04/15/2026		NOTICE OF CANCELLATION: The Motion Hearing scheduled for 4/17/2026 at 1:00 PM is CANCELLED. (Kahlon, S) (Entered: 04/15/2026)
04/16/2026	45	Docket Entry Correction: The PDF of document 43 was corrected and replaced with the attached. (Reis, J) (Entered: 04/16/2026)
04/16/2026	46	JUDGMENT entered in favor of Richard Agag against Cigna Health and Life Insurance Company. For Appeal Forms please go to the following website: http://www.ctd.uscourts.gov/forms/all-forms/appeals_forms Signed by Clerk on 4/16/2026. (Reis, J) (Entered: 04/16/2026)
04/16/2026		JUDICIAL PROCEEDINGS SURVEY - FOR COUNSEL ONLY: The following link to the confidential survey requires you to log into CM/ECF for SECURITY purposes. Once in CM/ECF you will be prompted for the case number. Although you are receiving this survey through CM/ECF, it is hosted on an independent website called SurveyMonkey. Once in SurveyMonkey, the survey is located in a secure account. The survey is not docketed and it is not sent directly to the judge. To ensure anonymity, completed surveys are held up to 90 days before they are sent to the judge for review. We hope you will take this opportunity to participate, please click on this link: https://ecf.ctd.uscourts.gov/cgi-bin/Dispatch.pl?survey (Reis, J) (Entered: 04/16/2026)
05/01/2026	47	NOTICE OF APPEAL as to 46 Judgment, by Cigna Health and Life Insurance Company. Filing fee $ 605, receipt number ACTDC-8594170. (Attachments: # 1 Exhibit Order, # 2 Exhibit Judgment)(Oks, Caroline) (Entered: 05/01/2026)
05/04/2026	48	CLERK'S CERTIFICATE RE: INDEX AND RECORD ON APPEAL re: 47 Notice of Appeal. The attached docket sheet is hereby certified as the entire Index/Record on Appeal in this matter and electronically sent to the Court of Appeals, with the exception of any manually filed documents as noted below. Dinah Milton Kinney, Clerk. Documents manually filed not included in this transmission: None (Imbriani, S) (Entered: 05/04/2026)

05/15/2026	49	MOTION to Stay re 46 Judgment, *of Execution of Judgment and to Approve Supersedeas Bond* by Cigna Health and Life Insurance Company.Responses due by 6/5/2026 (Attachments: # 1 Brief, # 2 Text of Proposed Order, # 3 Certificate of Service) (Oks, Caroline) (Entered: 05/15/2026)
05/19/2026	50	ORDER granting 49 Motion for Stay of Execution of Judgment and to Approve Supersedeas Bond by Cigna Health and Life Insurance Company. Execution of the Court's Judgment dated April 16, 2026, doc. no. 46, is hereby STAYED from May 16, 2026 through the resolution of any and all appeals to the United States Court of Appeals for the Second Circuit and the United States Supreme Court. A supersedeas bond in the amount of $150,000.00 is approved. Cigna Health and Life Insurance Company shall submit the supersedeas bond to the Clerk's Office within seven (7) days of the entry of this Order. The parties shall keep this Court apprised of any decision issued by the Second Circuit and the filing of any petition with the United States Supreme Court seeking certiorari review. Signed by Judge Stefan R. Underhill on 5/19/2026. (SK) (Entered: 05/19/2026)
05/22/2026	51	Supersedeas BOND in the amount of $ $150,000.00 posted by Cigna Health and Life Insurance Company (to) (Entered: 05/22/2026)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD, Plaintiff, -against- CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	Index No.: **COMPLAINT**

Plaintiff Richard Agag, MD ("Plaintiff") by and through his attorneys, Gottlieb & Greenspan, LLC, by way of Complaint against Cigna Health and Life Insurance Company ("Defendant"), alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a medical provider with a principal place of business at 456 Washington Street, 8E, New York, New York 10021.

2. Upon information and belief, Defendant is engaged in providing and/or administering health care plans or policies in the state of Connecticut.

3. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under federal law, specifically the No Surprises Act ("NSA"), 42 U.S.C. § 300gg-111 *et seq.*, which governs the Independent Dispute Resolution ("IDR") process for certain out-of-network billing disputes including those at issue here, as well the Federal Arbitration Act ("FAA"), 9 U.S.C §9 *et seq*.

4. Venue is proper in the United States District Court for the District of Connecticut, pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to this action occurred within the district.

FACTUAL BACKGROUND

5. Plaintiff is a medical provider specializing in plastic and reconstructive surgery.

6. During all times relevant herein, the patients treated by Plaintiff were the beneficiaries of a health plan issued and/or administered by Defendant.

7. As an out-of-network provider, Plaintiff does not have a network contract that would determine or limit payment for Plaintiff's services to Defendant's members.

8. However, since the services were rendered emergently/inadvertently, the patients' out-of-network medical treatments in this action are subject to reimbursement pursuant to the NSA. 42 U.S.C. § 300gg-111 *et seq*.

9. Pursuant to the NSA, an out-of-network provider reserves the right to dispute a health plan's reimbursement for qualifying out-of-network services and initiate a 30-day negotiation period. 42 U.S.C. § 300gg-111(c)(1)(A).

10. Pursuant to the NSA, if a payment dispute between the provider and insurer is not resolved during the negotiation period, the provider has the right to initiate arbitration under which the proper reimbursement amount is determined by a neutral arbitrator, a certified IDR entity ("CIDRE"). 42 U.S.C. § 300gg-111(c)(1-5).

11. Pursuant to the NSA, if it is determined in arbitration that an additional amount remains due, the insurer has 30 days from the date of the final award determination to issue the additional payment, which is the effective date of the arbitration award. 42 U.S.C. § 300gg-111(c)(6).

12. The NSA provides that a determination of an IDR award is legally "binding upon the parties involved." 42 U.S.C. § 300gg–111(c)(5)(E)(i)(I).

I. Patient M.L. - DISP-878778

13. On April 14, 2023, Plaintiff performed surgical treatment as part of a procedure for an individual identified as M.L. ("Patient M.L.") at Backus Hospital, a hospital located in Norwich, Connecticut.

14. After treating Patient M.L., Plaintiff submitted a Health Insurance Claim Form ("HCFA") medical bill to Defendant seeking payment for the procedure, itemized under Current Procedural Terminology ("CPT") code 19364 in the amount of $196,000.00.

15. In response to Plaintiff's HCFA, Defendant allowed payment to Plaintiff in the amount of $0.00.

16. Pursuant to the NSA, Plaintiff disputed Defendant's payment determination and initiated the negotiation period called for by the NSA. In effect, Plaintiff was disputing Defendant's payment determination of $0.00.

17. As the parties were unable to resolve the dispute during the NSA's negotiation period, Plaintiff initiated the IDR arbitration process called for by the NSA.

18. Because Patient's treatment implicated the NSA, there was no dispute as to Plaintiff's eligibility to challenge Defendant's payment determination. Indeed, defendant participated in the IDR process and submitted a final offer of $421.25 for CPT code 19364.

19. On March 6, 2024, the CIDRE, Federal Hearings and Appeals Service, Inc., ruled in Plaintiff's favor under Arbitration Dispute DISP-878778, awarding Plaintiff a total of $97,500.00 for CPT code 19364. *See* **Exhibit A**, attached hereto.

20. Under the NSA, if it is determined in arbitration that an additional amount remains due, the insurer has 30 days from the date of the arbitration award to issue the additional payment. Thus, the *effective* date of the arbitration award is April 5, 2024.

21. However, Defendant failed to issue payment to Plaintiff by April 5, 2024.

22. As of the date of this Complaint, over 300 days have passed since have elapsed since Defendant's deadline to submit the $97,500.00 arbitration award payment to Plaintiff for DISP-878778.

23. As a result, Plaintiff has been damaged in the amount of $97,500.00 in regard to CPT code 19364 for this procedure and continues to suffer damages in the operation of his medical practice.

II. Patient M.P.

24. On January 7, 2022, Plaintiff performed surgical treatment as part of a procedure for an individual identified as M.P. ("Patient M.P.") at Saint Mary's Hospital, a hospital located in Waterbury, Connecticut.

A. DISP-2001877

25. After treating Patient M.P., Plaintiff submitted a HCFA medical bill to Defendant seeking payment for the procedure, itemized under CPT code 35703 LT in the amount of $9,226.40.

26. In response to Plaintiff's HCFA, Defendant allowed payment to Plaintiff in the amount of $0.00.

27. Pursuant to the NSA, Plaintiff disputed Defendant's payment determination and initiated the negotiation period called for by the NSA. In effect, Plaintiff was disputing Defendant's payment determination of $0.00.

28. As the parties were unable to resolve the dispute during the NSA's negotiation period, Plaintiff initiated the IDR arbitration process called for by the NSA.

29. Because Patient's treatment implicated the NSA, there was no dispute as to Plaintiff's eligibility to challenge Defendant's payment determination.

30. On December 19, 2024, the CIDRE, ProPeer Resources, LLC, ruled in Plaintiff's favor under Arbitration Dispute DISP-2001877, awarding Plaintiff a total of $5,535.84 for CPT code 35703 LT. *See* **Exhibit B**, attached hereto.

31. Under the NSA, if it is determined in arbitration that an additional amount remains due, the insurer has 30 days from the date of the arbitration award to issue the additional payment. Thus, the effective date of the arbitration award is January 18, 2025.

32. However, Defendant failed to issue payment to Plaintiff by January 18, 2025.

33. As of the date of this Complaint, over 60 days have passed since have elapsed since Defendant's deadline to submit the $5,535.84 arbitration award payment to Plaintiff for DISP-2001877.

34. As a result, Plaintiff has been damaged in the amount of $5,535.84 in regard to CPT code 35703 LT for this procedure and continues to suffer damages in the operation of his medical practice.

B. DISP-2001876

35. After treating Patient M.P., Plaintiff submitted a HCFA medical bill to Defendant seeking payment for the procedure, itemized under CPT code 35703 RT in the amount of $9,226.40.

36. In response to Plaintiff's HCFA, Defendant allowed payment to Plaintiff in the amount of $0.00.

37. Pursuant to the NSA, Plaintiff disputed Defendant's payment determination and initiated the negotiation period called for by the NSA. In effect, Plaintiff was disputing Defendant's payment determination of $0.00.

38. As the parties were unable to resolve the dispute during the NSA's negotiation period, Plaintiff initiated the IDR arbitration process called for by the NSA.

39. Because Patient's treatment implicated the NSA, there was no dispute as to Plaintiff's eligibility to challenge Defendant's payment determination.

40. On December 19, 2024, the CIDRE, ProPeer Resources, LLC, ruled in Plaintiff's favor under Arbitration Dispute DISP-2001876, awarding Plaintiff a total of $5,535.84 for CPT code 35703 RT. *See* **Exhibit C**, attached hereto.

41. Under the NSA, if it is determined in arbitration that an additional amount remains due, the insurer has 30 days from the date of the arbitration award to issue the additional payment. Thus, the effective date of the arbitration award is January 18, 2025.

42. However, Defendant failed to issue payment to Plaintiff by January 18, 2025.

43. As of the date of this Complaint, over 60 days have passed since have elapsed since Defendant's deadline to submit the $5,535.84 arbitration award payment to Plaintiff for DISP-2001876.

44. As a result, Plaintiff has been damaged in the amount of $5,535.84 in regard to CPT code 35703 RT for this procedure and continues to suffer damages in the operation of his medical practice.

C. DISP-2001874

45. After treating Patient M.P., Plaintiff submitted a HCFA medical bill to Defendant seeking payment for the procedure, itemized under CPT code 15002 in the amount of $7,700.00.

46. In response to Plaintiff's HCFA, Defendant allowed payment to Plaintiff in the amount of $0.00.

47. Pursuant to the NSA, Plaintiff disputed Defendant's payment determination and initiated the negotiation period called for by the NSA. In effect, Plaintiff was disputing Defendant's payment determination of $0.00.

48. As the parties were unable to resolve the dispute during the NSA's negotiation period, Plaintiff initiated the IDR arbitration process called for by the NSA.

49. Because Patient's treatment implicated the NSA, there was no dispute as to Plaintiff's eligibility to challenge Defendant's payment determination.

50. On December 19, 2024, the CIDRE, ProPeer Resources, LLC, ruled in Plaintiff's favor under Arbitration Dispute DISP-2001874, awarding Plaintiff a total of $7,700.00 for CPT code 15002. *See* **Exhibit D**, attached hereto.

51. Under the NSA, if it is determined in arbitration that an additional amount remains due, the insurer has 30 days from the date of the arbitration award to issue the additional payment. Thus, the effective date of the arbitration award is January 18, 2025.

52. However, Defendant failed to issue payment to Plaintiff by January 18, 2025.

53. As of the date of this Complaint, over 60 days have passed since have elapsed since Defendant's deadline to submit the $7,700.00 arbitration award payment to Plaintiff for DISP-2001874.

54. As a result, Plaintiff has been damaged in the amount of $7,700.00 in regard to CPT code 15002 for this procedure and continues to suffer damages in the operation of his medical practice.

D. DISP-2001871

55. After treating Patient M.P., Plaintiff submitted a HCFA medical bill to Defendant seeking payment for the procedure, itemized under CPT code 32900 RT in the amount of $31,752.40.

56. In response to Plaintiff's HCFA, Defendant allowed payment to Plaintiff in the amount of $0.00.

57. Pursuant to the NSA, Plaintiff disputed Defendant's payment determination and initiated the negotiation period called for by the NSA. In effect, Plaintiff was disputing Defendant's payment determination of $0.00.

58. As the parties were unable to resolve the dispute during the NSA's negotiation period, Plaintiff initiated the IDR arbitration process called for by the NSA.

59. Because Patient's treatment implicated the NSA, there was no dispute as to Plaintiff's eligibility to challenge Defendant's payment determination.

60. On December 19, 2024, the CIDRE, ProPeer Resources, LLC, ruled in Plaintiff's favor under Arbitration Dispute DISP-2001871, awarding Plaintiff a total of $26,296.31 for CPT code 32900. *See* **Exhibit E**, attached hereto.

61. Under the NSA, if it is determined in arbitration that an additional amount remains due, the insurer has 30 days from the date of the arbitration award to issue the additional payment. Thus, the effective date of the arbitration award is January 18, 2025.

62. However, Defendant failed to issue payment to Plaintiff by January 18, 2025.

63. As of the date of this Complaint, over 60 days have passed since have elapsed since Defendant's deadline to submit the $26,296.31 arbitration award payment to Plaintiff for DISP-2001871.

64. As a result, Plaintiff has been damaged in the amount of $26,296.31 in regard to CPT code 32900 RT for this procedure and continues to suffer damages in the operation of his medical practice.

65. Accordingly, Plaintiff has been damaged in the total amount of $142,567.99 and continues to suffer damages in the operation of its medical practice.

COUNT ONE

PLAINTIFF SEEKS RELIEF IN ACCORDANCE WITH 9 U.S. CODE § 9

66. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 73 of the Complaint as though fully set forth herein.

67. The FAA, 9 U.S. CODE § 9, provides that, if the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made, any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order.

68. In this case, while the parties do not have an agreement that a judgment of the court shall be entered upon the arbitration award at issue, the "binding" arbitration award was issued pursuant to the federal NSA. 42 U.S.C. § 300gg–111(c)(5)(E)(i)(I).

69. Indeed, federal courts have affirmed their authority to confirm arbitration awards issued pursuant to the NSA under 9 U.S.C. § 9. *See, e.g.*, *GPS of N.J. M.D. v. Horizon Blue Cross & Blue Shield*, No. 22-6614 (KM) (JBC), 2023 U.S. Dist. LEXIS 159460, at *1 (D.N.J. Sep. 8, 2023) (granting Horizon Blue Cross & Blue Shield's cross-motion to confirm an NSA entity award under 9 U.S.C. § 9 because the language of the NSA indicates the NSA award is "final and binding" and, by invoking Section 10(a) of the Federal Arbitration Act, the NSA "gives the court

the authority to confirm the award"); *see also Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC,* No. 8:24-CV-840-TPB-CPT, 2024 U.S. Dist. LEXIS 167943, at *1 (M.D. Fla. Sep.18, 2024) (confirming an NSA award under 9 U.S.C. § 9).

70. It is against equity and good conscience to deprive Plaintiff of a remedy to enforce a "binding" arbitration award issued in accordance with federal law.

71. Accordingly, Plaintiff brings this action for an Order confirming the applicable arbitration awards as follows:

a. DISP-878778: $97,500.00
b. DISP-2001877: $5,535.84
c. DISP-2001876: $5,535.84
d. DISP-2001874: $7,700.00
e. DISP-2001871: $26,296.31

COUNT TWO

VIOLATION OF THE FEDERAL NO SURPRISES ACT REGARDING THE NON-PAYMENT OF BINDING AWARDS

72. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 79 of the Complaint as if fully set forth herein.

73. Under the NSA, a party is permitted to initiate the federal IDR process after a mandatory thirty-day negotiation period if the parties are unable to agree on the out-of-network rate for medical services. 42 U.S.C. § 300gg-111(c)(1-5).

74. In the instant case, the parties were unable to agree on the out-of-network rate for the services provided, and the parties therefore proceeded to arbitration as called for the NSA.

75. The CIDREs assigned to these disputes, made the following determinations:

i. DISP-878778: awarding Plaintiff $97,500.00, due April 5, 2024
ii. DISP-2001877: awarding Plaintiff $5,535.84, due January 18, 2025
iii. DISP-2001876: awarding Plaintiff $5,535.84, due January 18, 2025
iv. DISP-2001874: awarding Plaintiff $7,700.00, due January 18, 2025

v. DISP-2001871: awarding Plaintiff $26,296.31, due January 18, 2025

76. According to the NSA, Defendant had thirty (30) days to remit the arbitration payments to Plaintiff. 42 U.S.C. § 300gg-111(c)(6).

77. As of the date of the filing of this Complaint, Defendant has failed to remit any of the arbitration payments to Plaintiff.

78. As such, Defendant has failed to comply with the requirements of the NSA.

79. Accordingly, due to Defendant's failure to comply with the NSA's requirements, Plaintiff has been damaged in the total amount of $142,567.99.

CLAIM FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

A. For an Order confirming the arbitration awards as follows:

i. DISP-878778: $97,500.00

ii. DISP-2001877: $5,535.84

iii. DISP-2001876: $5,535.84

iv. DISP-2001874: $7,700.00

v. DISP-2001871: $26,296.31

B. For an Order directing Defendant to pay Plaintiff $142,567.99;

C. For attorney's fees, interest, and costs of suit; and

D. For such other and further relief as the Court may deem just and equitable.

Dated: Fair Lawn, New Jersey
March 27, 2025

GOTTLIEB & GREENSPAN, LLC
Attorneys for Plaintiff

By: /s/ James Greenspan
James Greenspan
17-17 Route 208, Suite 250
Fair Lawn, New Jersey 07410
Tel: (201) 644-0891
Fax: (201) 627-2426
jgreenspan@gottliebandgreenspan.com

Exhibit A

IDR dispute status: Payment Determination Made
IDR reference number: DISP-878778

Federal Hearings and Appeals Services, Inc. has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-878778** and has determined that Richard Agag is the prevailing party in this dispute.

After considering all permissible information submitted by both parties, Federal Hearings and Appeals Services, Inc. has determined that the out-of-network payment amount of **$97,500.00** offered by Richard Agag is the appropriate out-of-network rate for the item or service 19364 on claim number 4682328298918 under this dispute.

Federal Hearings and Appeals Services, Inc. based this determination on a review of the following:

Richard Agag submitted an offer of $97,500.00

Cigna submitted an offer of $421.25

For each of the following determination factors, an “x” in the Initiating Party and/or Non-Initiating Party column means the party provided supporting information.

	Additional Circumstances	Initiating Party	Non-Initiating Party
1	The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished such item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act)	X	
2	The market share held by the nonparticipating provider or facility or that of the plan or issuer in the geographic region in which the item or service was provided	X	
3	The acuity of the individual receiving such item or service or the complexity of furnishing such item or service to such individual	X	
4	The teaching status, case mix, and scope of services of the nonparticipating facility that furnished such item or service		
5	Demonstrations of good faith efforts (or lack of good faith efforts) made by the disputing parties to enter into network agreements and, if applicable, contracted rates between the disputing parties during the previous 4 plan years	X	
6	Additional information submitted by a party	X	X

Final Determination Rationale

After a complete and careful consideration of the totality of the evidence as promulgated in 45 CFR 149.510(c)(4) which does not include information on the prohibited factors described in 45 CFR

149.510(c)(4)(v), and after applying the No Surprises Act statutory provisions, Richard Agag's offer best represents the value of the services that are the subject of this unique payment determination.

Both the Prevailing Party and the Non-Prevailing Party submitted an offer and credible information representing their valuation of the services provided. FHAS found that the Prevailing Party's offer best represents the value of the out-of-network service(s) due to the submitted, credible information for the following factors:

· Demonstration of the parties' good faith efforts (or lack thereof) to enter into network agreements with each other, and, if applicable, contracted rates during the previous 4 plan years

· The market share held by the provider or facility or the plan or issuer in the geographic region in which the qualified IDR item or service was provided

· Additional information submitted by a party (ex: information on down coding or additional information requested by the certified IDR entity)

· The acuity of the participant, beneficiary, or enrollee, receiving the qualified IDR item or service, or the complexity of furnishing the qualified IDR item or service to the participant, beneficiary, or enrollee

· The level of training/experience/quality/outcomes measurements of the provider or facility that furnished the qualified IDR item or service

Please note that while all factors are reviewed as required under 45 CFR 149.510(c)(4), the submitted evidence and information associated with the aforementioned factors demonstrated the prevailing party's offer best represents the value of the out-of-network service(s) in this particular case.

The Non-Initiating Party objected to not receiving the Open Negotiation Notice for the dispute. Supporting documentation was submitted showing the date when the open negotiation period was completed; and documentation that confirms the open negotiation start date. After reviewing the submitted documentation, FHAS has determined that the Open Negotiation period and the submission of the Notice were within CMS timeframes. Therefore, the objection was overruled.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

• **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

• **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. Federal Hearings and Appeals Services, Inc. has determined that Cigna is the non-prevailing party in DISP-878778 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii) and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the “cooling off” period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-878778 was Richard Agag. The initiating party’s TIN is 474541206. The non-initiating party was Cigna. The 90-calendar day cooling off period begins on March 6, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact Federal Hearings and Appeals Services, Inc.. Include your IDR Reference number referenced above.

Thank you,

Federal Hearings and Appeals Services, Inc.

Exhibit B

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001877

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001877** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $5,535.84 offered by Richard Agag is the appropriate out-of-network rate for the item or service 35703 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001877 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001877 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

Exhibit C

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001876

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001876** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $5,535.84 offered by Richard Agag is the appropriate out-of-network rate for the item or service 35703 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001876 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001876 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

Exhibit D

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001874

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001874** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $7,700.00 offered by Richard Agag is the appropriate out-of-network rate for the item or service 15002 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001874 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001874 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

Exhibit E

IDR dispute status: Payment Determination Made - Fees and Offer from One Party Only
IDR reference number: DISP-2001871

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-2001871** and has determined that Richard Agag is the prevailing party in this dispute.

Because only one party, Richard Agag , submitted an offer and paid the corresponding fees, ProPeer Resources, LLC has determined that the out-of-network payment amount of $26,296.31 offered by Richard Agag is the appropriate out-of-network rate for the item or service 32900 on claim number 4682422201002 under this dispute.

Final Determination Rationale
The certified IDR entity requested fees and offers from both parties, however, the certified IDR entity did not receive an offer and/or fees from one party. As a result, the certified IDR entity has found in favor of the party that submitted an offer and fees. ProPeer Resources, LLC did not receive an offer and/or fees from CIGNA . As a result, the certified IDR entity has found in favor of Richard Agag , the only party to submit an offer and fees.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.

- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FHHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that CIGNA is the non-prevailing party in DISP-2001871 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Richard Agag by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816–8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii)

and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the "cooling off" period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-2001871 was Richard Agag. The initiating party's TIN is 474541206. The non-initiating party was CIGNA. The 90-calendar day cooling off period begins on December 19, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources
Visit the No Surprises website for additional IDR resources.

Contact information
For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

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Ryan P. Goodwin (*pro hac vice* forthcoming)
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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD, Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	Civil Action No. 25-00498-SRU *Document electronically filed*

MOTION BY DEFENDANT CIGNA HEALTH AND LIFE INSURANCE COMPANY TO DISMISS PLAINTIFF RICHARD AGAG, MD'S COMPLAINT

PLEASE TAKE NOTICE that Defendant Cigna Health and Life Insurance Company ("Cigna") respectfully moves before the Honorable Stefan R. Underhill, U.S.D.J., in the United States District Court for the District of Connecticut, 915 Lafayette Boulevard, Suite 411, Bridgeport, Connecticut 06604, for an Order pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure dismissing Plaintiff Richard Agag, MD's ("Plaintiff") Complaint (ECF No. 1).

PLEASE TAKE FURTHER NOTICE that in support of its Motion, Cigna shall rely upon the Memorandum of Law submitted concurrently herewith.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is submitted for the Court's consideration.

PLEASE TAKE FURTHER NOTICE that oral argument is requested.

Dated: September 26, 2025
Newark, New Jersey

Respectfully submitted,

s/ Caroline E. Oks
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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD,

Plaintiff,

v.

CIGNA HEALTH AND LIFE INSURANCE COMPANY,

Defendant.

Civil Action No. 25-498-SRU

Document electronically filed

DEFENDANT CIGNA HEALTH AND LIFE INSURANCE COMPANY'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF RICHARD AGAG, MD'S COMPLAINT

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Dated: September 26, 2025

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Defendant Cigna Health and Life Insurance Company ("Cigna") respectfully submits this memorandum of law in support of its Motion to Dismiss Plaintiff Richard Agag, MD's ("Plaintiff") Complaint (ECF No. 1) seeking confirmation of Independent Dispute Resolution ("IDR") awards issued under the No Surprises Act, 42 U.S.C. § 300gg-111 *et seq.* (the "NSA"), pursuant to § 9 of the Federal Arbitration Act (the "FAA"), 9 U.S.C. § 9, and alleging Cigna's violation of the NSA.

PRELIMINARY STATEMENT

Plaintiff is a medical provider who alleges that he rendered healthcare services to two different patients whom Plaintiff claims were insured under separate health benefit plans administered by Cigna. Because Plaintiff claims that he did not have a contract with those plans (*i.e.*, that he was "out-of-network"), Plaintiff maintains he initiated IDR proceedings under the NSA and obtained awards in the amount of $142,567.99. Through this action, Plaintiff seeks both judicial confirmation of the IDR awards under § 9 of the FAA, and damages for an alleged violation of the NSA. The Court should dismiss the Complaint for several reasons.

First, the NSA does not provide a private right of action to seek judicial confirmation of IDR determinations under § 9 of the FAA. Congress did not incorporate § 9 of the FAA into the NSA. Nor did Congress grant any other right to obtain judicial confirmation of IDR determinations. Instead, the NSA sets forth a robust administrative oversight and enforcement scheme, and the United States Department of Health and Human Services ("HHS") along with other federal agencies, have established processes to police alleged NSA violations. Plaintiff's attempt to obtain judicial intervention under 9 U.S.C. § 9 is improper. Therefore, Count One, which seeks "Relief in Accordance with 9 U.S. Code § 9," fails as a matter of law because such "cause of action" is not available.

The NSA also does not authorize a cause of action for a private party to enforce an alleged substantive violation of the statute. Plaintiff therefore has no right to file an action and obtain civil

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remedies against Cigna for an alleged substantive violation of the NSA. Here again, the NSA provides for administrative remedies, not judicial relief. Accordingly, because Plaintiff has no right of action to obtain relief for an alleged NSA violation, Plaintiff's second cause of action for "violation of the federal No Suprises Act" also must fail.

The Complaint here is not novel. A growing number of courts, including the Fifth Circuit and several district courts, have rejected similar actions because Congress did not authorize a private right of action under the NSA. Accordingly, neither count of Plaintiff's Complaint states a valid cause of action upon which relief may be granted.

Second, even assuming the NSA authorizes Plaintiff a right to petition for judicial confirmation of an IDR award, and even assuming § 9 of the FAA applies, Plaintiff is out-of-time to seek confirmation of at least one IDR determination. Under § 9 of the FAA, a party has one year from the date an award is made to apply for an order confirming that award. Plaintiff alleges that he obtained an IDR award under DISP-878778 on March 6, 2024. But Plaintiff did not file his Complaint until March 27, 2025. So more than one year elapsed from the date of the IDR determination and the date Plaintiff filed this action. Accordingly, even when accepting the allegations made in the Complaint as true, Plaintiff is time barred from obtaining an order to confirm DISP-878778.

For all these reasons, and as set forth more fully below, the Court must dismiss Plaintiff's Complaint in its entirety.

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BACKGROUND

A. The Federal No Surprises Act

Congress enacted the NSA to protect health care patients from "surprise medical bills" incurred when they receive certain emergency medical services from an out-of-network health care provider or non-emergent medical services from an out-of-network provider at an in-network health care facility. Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2758–2890 (2020), *codified at* 42 U.S.C. § 300gg-111 *et seq.* When an insured patient receives medical care under such circumstances, the NSA: (1) limits the amount the patient owes for the medical care, and (2) removes the patient from any billing disputes between the payer and provider. To resolve those disputes, the NSA created a separate non-judicial resolution process without further patient liability.

1. The NSA Bans Surprise Medical Bills and Limits Patients' Financial Responsibilities

The NSA prohibits a medical provider that is out-of-network with an insured patient's group health plan or health insurance issuer (collectively, "payer") from balance billing or otherwise holding the patient liable for the cost of the unanticipated out-of-network care beyond that patient's in-network cost sharing responsibility, *e.g.*, deductible, copayment, or coinsurance. *See* 42 U.S.C. §§ 300gg-131, 300gg-132. If a provider bills a patient beyond the patient's in-network cost sharing, "the provider shall reimburse the [patient] for the full amount paid by the [patient] in excess of the in-network cost-sharing amount for the treatment or services involved, plus interest, at an interest rate determined by the [HHS] Secretary." 42 U.S.C. § 300gg-139(b).

2. Open Negotiations and the IDR Process

The NSA further established a non-judicial dispute resolution process when a provider and payer cannot agree on payment for the medical care rendered by the out-of-network provider to the protected patient. Under the NSA, the out-of-network provider must first submit the claim directly to the insureds' health plan. 42 U.S.C. § 300gg-111(b)(1)(C)–(D). Within thirty (30) days of receipt, the payer must render an initial payment or issue a notice of denial to the provider. *Id.* at § 300gg-111(a)(1)(C)(iv)(I). When an out-of-network provider is dissatisfied with the payment, if any, it received from a payer, the provider may attempt to negotiate with the payer on an agreed-upon payment rate for the relevant services. *See id.* at § 300gg-111(c)(1). If open negotiations fail and the negotiation period is exhausted, the provider or the payer may initiate the IDR process. *Id.* at § 300gg-111(c)(1)(B). Under the IDR process, the parties select, or HHS appoints, a certified IDR Entity ("CIDRE") to resolve the dispute and make a payment determination. *Id.* at §§ 300gg-111(c)(4)(F), (c)(5).

The IDR process resembles "baseball-style" arbitration. Under "baseball-style" arbitration, the provider and payer each submit a final offer, and the IDR entity must select one of the two proposed amounts. *E. Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Ins. Co.*, Nos. 25-cv-00255 (PAE) & 25-cv-01686 (PAE), 2025 U.S. Dist. LEXIS 157911, at *17 (S.D.N.Y. Aug. 14, 2025). The IDR entity must decide the arbitration and notice the parties of its decision within thirty days from the date of its IDR selection. 42 U.S.C. § 300gg-111(c)(5)(B)(i); 45 C.F.R. § 149.510(c)(4)(ii). In the absence of a fraudulent claim or evidence of a misrepresentation of facts to the CIDRE, an IDR award is "binding" on the parties, 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I), and payment of the award "shall be made . . . not later than 30 days after the date on which such determination is made," *id.* at § 300gg-111(c)(6).

3. Limited Judicial Review

Congress explicitly confined judicial review of IDR determinations under the NSA. The statute provides that an IDR determination "shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a)" of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

Section 10(a) governs judicial review of applications to vacate an arbitral award under the FAA. 9 U.S.C.§ 10(a). Under § 10(a), a party may file an application to vacate an arbitration award in "the United States court in and for the district wherein the award was made," based on circumstances as set forth in § 10(a)(1)–(4). 9 U.S.C. § 10(a)(1)–(4).

Section 9 of the FAA governs applications to confirm an arbitral award. 9 U.S.C. § 9. Unlike its incorporation of § 10(a), the NSA does not incorporate § 9 of the FAA. Nor does the NSA authorize any other procedure for judicial review and enforcement of an IDR determination. *See generally* 42 U.S.C. § 300gg-111 *et seq.* The NSA also does not permit private parties to recover damages for alleged substantive violations of the statute itself. *See id.*

4. Administrative Agency Oversight and Enforcement Authority

Congress vested HHS with oversight and enforcement authority over the IDR process. Regarding oversight, the NSA directs HHS to establish the IDR process, oversee the certification and decertification of CIDREs, publicize certain information regarding the IDR process, establish and collect administrative fees for managing the IDR process, and permits HHS discretion to "modify any deadline or other timing requirement . . . in cases of extenuating circumstances[.]" 42 U.S.C. §§ 300gg-111(c)(9); *see also id.* at § 300gg-111(c)(1)(B), (c)(2)(A), (c)(3), (c)(4), (c)(7), (c)(8).

Regarding enforcement, the NSA specifies that HHS may enforce payer and provider non-compliance with the statute's provisions. 42 U.S.C. § 300gg-22(b)(2) (providing for HHS

enforcement against payers for NSA non-compliance); *id.* at § 300gg-134 (providing for HHS enforcement against providers for NSA non-compliance); *see also* 45 C.F.R. § 150.301 *et seq.* (governing the imposition of civil monetary penalties against payers).

Under the NSA, HHS may impose per day civil monetary penalties on payers for violations of the statute. *See* 42 U.S.C. § 300gg-22(b)(2). The regulatory and enforcement schemes under the NSA further set forth an administrative review and fair hearing process for payers to challenge the imposition of monetary penalties, *id.* at § 300gg-22(b)(2)(D), and HHS may refer the failure of a payer to pay a monetary penalty to the Attorney General to recover the penalty through judicial enforcement, *id.* at § 300gg-22(b)(2)(F), among other administrative remedies.

The Centers for Medicare & Medicaid Services ("CMS"), an agency within HHS, along with other federal agencies, "oversee the IDR process through complaint reviews and market conduct examinations." *See* Gov't Accountability Off., GAO-24-106335, Private Health Insurance: Roll Out of Independent Dispute Resolution Process for Out-of-Network Claims Has Been Challenging, https://www.gao.gov/assets/870/864587.pdf, at 34–35 (Dec. 2023) ("GAO-24-106335"). Providers may submit complaints against payers to CMS for review and potential enforcement. For providers "who believe an entity is not complying with the federal IDR process, or . . . want to report a violation of the protections of the No Surprises Act," CMS maintains an online portal through which providers may submit complaints regarding the IDR process. *See* Providers: Submit a Billing Complaint, CMS, https://www.cms.gov/nosurprises/policies-and-resources/providers-submit-a-billing-complaint (last visited Sept. 26, 2025); No Surprises Complaint Form, CMS, https://nsa-idr.cms.gov/providercomplaints/s/ (last visited Sept. 26, 2025). If a payer fails to timely issue payment on an IDR award, CMS "would require the issuer to pay the provider the determined award amount." GAO-24-106335, at 35.

B. Plaintiff Commenced This Action Against Cigna To Confirm The IDR Award[1]

Plaintiff is a "medical provider specializing in plastic and reconstructive surgery." (Complaint, ECF No. 1 (the "Compl.") ¶ 5.) Plaintiff alleges that he rendered healthcare services to separate patients, M.L. and M.P. As to patient M.L., Plaintiff alleges that he performed surgical treatment on April 14, 2023 at Backus Hospital in Norwich, Connecticut. (*Id.* ¶ 13.) As to patient M.P., Plaintiff alleges that he performed surgical treatment on January 22, 2022 at Saint Mary's Hospital, located in Waterbury, Connecticut. (*Id.* ¶ 24.) Plaintiff alleges that both patients were beneficiaries of health benefit plans administered by Cigna (*id.* ¶ 6), and that he did not have a network contract with either plan (*id.* ¶ 7). Because Plaintiff was "out-of-network" with those plans at the time of service and because the services were "rendered emergently/inadvertently," Plaintiff claims those services "are subject to reimbursement pursuant to the NSA." (*Id.* ¶ 8.) Plaintiff alleges that for each patient, he initiated the IDR process under the NSA to dispute alleged underpayments received from Cigna. (*Id.* ¶¶ 16–17, 27–28, 37–38, 47–48, 57–58.)

According to documentation attached to the Complaint, two CIDREs found Plaintiff the prevailing party in five separate IDR proceedings. (*Id.*, Exs. A–E.) As to patient M.L., Plaintiff alleges that on March 6, 2024, Federal Hearings and Appeals Services, Inc., found Plaintiff the prevailing party under IDR dispute number DISP-878778 and awarded Plaintiff a total of $97,500.00. (*Id.* ¶ 19, Ex. A.) As to patient M.P., Plaintiff alleges that ProPeer Resources, LLC found Plaintiff the prevailing party under IDR dispute numbers DISP-2001877, DISP-2001876, DISP-2001874, and DISP-2001871. (*Id.* ¶ 30, Ex. B; ¶ 40, Ex. C; ¶ 50, Ex. D; ¶ 60, Ex. E.). Across both patients, Plaintiff claims he received a total of $142,567.99 in awards. (*Id.* ¶¶ 19, 30, 40, 50,

[1] Cigna accepts the truth of the allegations in the Complaint only for purposes of this memorandum of law but does not admit the accuracy of those allegations and reserves all rights, privileges, and defenses in this matter.

60.) Plaintiff alleges that Cigna failed to pay the IDR awards within 30 days of each IDR determination. (*Id.* ¶¶ 22, 33, 43, 53, 63.)

Plaintiff filed this two-count complaint on March 27, 2025.[2] At Count One, "Plaintiff Seeks Relief In Accordance With 9 U.S. Code § 9" seeking an order confirming the five IDR awards. (*Id.*, Count One.) At Count Two, Plaintiff alleges Cigna's non-compliance with the NSA and brings a cause of action for "Violation of the Federal No Surprises Act Regarding the Non-Payment of Awards." (*Id.*, Count Two.) Plaintiff demands judgment not only directing Cigna's reimbursement, but also "attorney's fees, interest, and costs of suit." (*Id.*, Claim for Relief.)

For the reasons that follow, the Court should dismiss Plaintiff's Complaint.

LEGAL STANDARDS

A. Rule 12(b)(1)

"A case is properly dismissed for lack of subject matter jurisdiction under [Federal Rule of Civil Procedure] 12(b)(1) when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). The plaintiff bears the burden of establishing by a preponderance of the evidence that the court has subject matter jurisdiction over the claims. *Id.*

"Federal courts 'have only the power that is authorized by Article III of the Constitution *and* the statutes enacted by Congress pursuant thereto.'" *Guthrie v. Rainbow Fencing Inc.*, 113 F.4th 300, 304 (2d Cir. 2024) (emphasis in original) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986)). Accordingly, subject matter jurisdiction is "limited by both

[2] Plaintiff brings this action in the form of a complaint, but the confirmation of an arbitration award should be initiated as a summary proceeding. *See Stafford v. IBM*, 78 F.4th 62, 67 (2023). By moving to dismiss this complaint, Cigna does not concede the propriety of Plaintiff's action nor does it waive any rights it would have had Plaintiff proceeded properly.

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statute—[courts] have only the jurisdiction granted to [them] by Congress—and by Article III of the United States Constitution . . . ." *Id.* (citing *In re Auction Houses Antitrust Litig.*, 42 F. App'x 511, 515 (2d Cir. 2002)). Federal courts, therefore, have an "independent obligation" to satisfy themselves of subject matter jurisdiction. *Stafford*, 78 F.4th at 68 (quoting *Melito v. Experian Mktg. Sols., Inc.*, 923 F.3d 85, 92 (2d Cir. 2019)). If subject matter jurisdiction is lacking "at any time," courts "must dismiss the action." Fed. R. Civ. P. 12(h)(3).

"When considering a motion to dismiss pursuant to Rule 12(b)(1), the court must take all facts alleged in the complaint as true and draw all reasonable inferences in favor of plaintiff." *Sweet v. Sheahan*, 235 F.3d 80, 83 (2d Cir. 2000); *see also NRDC v. Johnson*, 461 F.3d 164, 171 (2d Cir. 2006) (quoting *Sweet*, 235 F.3d at 83). The Court may also, however, resolve disputed jurisdictional fact issues "by referring to evidence outside of the pleadings, such as affidavits, and if necessary, hold an evidentiary hearing." *Karlen ex rel. J.K. v. Westport Bd. of Educ.*, 638 F. Supp. 2d 293, 298 (D. Conn. 2009) (citing *Zappia Middle E. Constr. Co. v. Emirate of Abu Dhabi*, 215 F.3d 247, 253 (2d Cir. 2000)).

B. Rule 12(b)(6)

The federal rules require that a complaint contain a "short and plan statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). A claim that fails "to state a claim upon which relief can be granted" will be dismissed. *Id.* at 12(b)(6). In reviewing a complaint under Rule 12(b)(6), a court applies a "plausibility standard" guided by "[t]wo working principles." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). *First*, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*; *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) ("While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and

a formulaic recitation of the elements of a cause of action will not do[.]") (alteration in original) (citations omitted). *Second*, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Iqbal*, 556 U.S. at 679. Thus, the complaint must contain "factual amplification . . . to render a claim plausible." *Arista Records LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010) (quoting *Turkmen v. Ashcroft*, 589 F.3d 542, 546 (2d Cir. 2009)).

When reviewing a complaint under Rule 12(b)(6), the court takes all factual allegations as true. *Iqbal*, 556 U.S. at 678. The court also views the allegations in the light most favorable to the plaintiff and draws all inferences in the plaintiff's favor. *Cohen v. S.A.C. Trading Corp.*, 711 F.3d 353, 359 (2d Cir. 2013); *see also York v. Ass'n of the Bar of N.Y.C.*, 286 F.3d 122, 125 (2d Cir. 2002) ("On a motion to dismiss for failure to state a claim, we construe the complaint in the light most favorable to the plaintiff, accepting the complaint's allegations as true.").

A court considering a motion to dismiss under Rule 12(b)(6) limits its review "to the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007). A court may also consider "matters of which judicial notice may be taken" and "documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit." *Brass v. Am. Film Techs., Inc.*, 987 F.2d 142, 150 (2d Cir. 1992); *Patrowicz v. Transamerica HomeFirst, Inc.*, 359 F. Supp. 2d 140, 144 (D. Conn. 2005).

ARGUMENT

I. COUNTS I AND II MUST BE DISMISSED BECAUSE THE NSA DOES NOT PROVIDE PLAINTIFF A PRIVATE RIGHT OF ACTION TO SUE CIGNA IN FEDERAL COURT

Plaintiff brings suit against Cigna for its alleged failure to timely pay certain IDR awards under the NSA. At Count I, Plaintiff seeks confirmation of the IDR determinations issued under the NSA pursuant to § 9 of the FAA. At Count II, Plaintiff alleges Cigna violated the NSA when it allegedly failed to timely remit payment of those determinations. Plaintiff demands judgment against Cigna and seeks relief in the form of an order directing payment of the IDR determinations, along with attorney's fees, interest, and costs of suit. But Plaintiff asks this Court to create causes of action that Congress did not. And without an authorized cause of action under the NSA, Plaintiff cannot establish subject matter jurisdiction in this Court. Thus, because Plaintiff cannot state a claim upon which relief can be granted, the Court should dismiss its Complaint.

"[C]reating a cause of action is a legislative endeavor." *Egbert v. Boule*, 596 U.S. 482, 491 (2022). Because "[l]ike substantive federal law itself, private rights of action to enforce federal law must be created by Congress." *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). Statutes provide a private cause of action *only if* Congress shows the intent to create a right and remedy through "clear and unambiguous terms." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290 (2002); *see also Cenzon-DeCarlo v. Mount Sinai Hosp.*, 626 F.3d 695, 697 (2d Cir. 2010) (holding federal statutes only create a private right of action where explicitly stated, or where there is "explicit evidence of Congressional intent" (citing *Sandoval*, 532 U.S. at 286–87)). A private right of action may be provided "either expressly or, more rarely, by implication." *Republic of Iraq v. ABB AG*, 768 F.3d 145, 170 (2d Cir. 2014), *cert. denied*, 576 U.S. 1028 (2015). But "[w]hen Congress has not explicitly provided a private right of action, however, 'the presumption [is] that Congress did not intend one.'" *Owusu-Boateng v. U.S. Citizenship & Immigr. Servs.*, No. 3:22-cv-00812

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(OAW), 2025 U.S. Dist. LEXIS 47799, at *13 (D. Conn. Mar. 17, 2025) (quoting *Bellikoff v. Eaton Vance Corp.*, 481 F.3d 110, 116 (2d Cir. 2007)). Plaintiff, as the party seeking to imply a right of action, bears the burden of showing Congress intended to make one available. *See Suter v. Artist M.*, 503 U.S. 347, 363 (1992).

Here, the NSA contains neither an express nor implied private right of action for Plaintiff to seek confirmation of the IDR determinations before this Court under § 9 of the FAA, must less convert them into a judgment. Nor does the NSA provide an express or implied private right of action to enforce alleged violations of the statute itself, and recover damages for substantiated violations. To the contrary, Congress explicitly *limited* judicial review to circumstances not applicable here. Instead, Congress granted HHS and other administrative agencies enforcement authority and oversight of the NSA.

The Fifth Circuit—the only circuit level court to address this issue—held unequivocally that "the NSA contains no private right of action," and affirmed dismissal of a similar action to the ones brought here seeking confirmation and enforcement of IDR determinations. *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 274 (5th Cir. 2025) ("*Guardian Flight*"). Several district courts, including two recent decisions within the Second Circuit, have also concluded that the NSA contains no private right of action to confirm an IDR determination or enforce a statutory violation. Without "a cause of action under the applicable statute," Plaintiff cannot bring a case before this Court.[3] *Am. Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 359 (2d Cir.

[3] In *Badgerow v. Walters*, the Supreme Court held that Section 9 of the FAA does not create independent federal question jurisdiction. 596 U.S. 1, 8 (2022) (noting that a petitioner seeking to confirm an arbitral award "must identify a grant of jurisdiction, apart from Section [9 and] 10 itself, conferring 'access to a federal forum.'") (quoting *Vaden v. Discover Bank*, 556 U. S. 49, 59 (2009)). This Circuit has confirmed that the FAA requires an independent jurisdictional basis for federal courts to entertain petitions under the FAA. *See, e.g.*, *Stafford*, 78 F.4th at 68 (noting that

2016).

A. Plaintiff Has No *Express* Right of Action Under the NSA to Confirm or Enforce an IDR Determination Under the FAA or the NSA

Plaintiff seeks confirmation of the IDR determinations under § 9 of the FAA, and enforcement of Cigna's alleged violation of the NSA for failure to pay those determinations. But the NSA supports neither cause of action. Congress did not incorporate § 9 of the FAA into the NSA. Nor did Congress authorize any other form of judicial enforcement over IDR determinations. And Plaintiff has not cited any provision of the NSA authorizing this action. So by its plain text, the NSA does not expressly authorize Plaintiff to bring an action in federal district court to confirm an IDR determination or to seek enforcement for an alleged violation of the NSA for failure to timely pay an award. Nor did Congress enact any other provision in the NSA to do so.

To start, there can be no dispute that Congress did not incorporate § 9 of the FAA into the NSA. Thus, "[t]he text of the statute contains no explicit provision for a private right of action" for a party to confirm or enforce an IDR determination. *Republic of Iraq*, 768 F.3d at 170. To confirm the an IDR determination under § 9 of the FAA, Plaintiff requires this Court to read § 9 into the NSA. But permitting a party to enforce an IDR determination under § 9 is contrary to the "fundamental principle of statutory interpretation that absent provision[s] cannot be supplied by the courts." *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (internal quotations marks and citation omitted); *see also McQuiggin v. Perkins*, 569 U.S. 383, 403 (2013) (noting that courts are "duty bound to enforce [a statute], not amend it").

Thus, "the NSA's plain text bars this suit." *Guardian Flight*, 140 F.4th at 276; *see also E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *48 (holding that "[t]he statutory text thus

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the FAA provisions authorizing an application to confirm an IDR award "do not themselves support federal jurisdiction" (quoting *Badgerow*, 596 U.S. at 9–10).

forecloses of a private right of action to enforce IDR determinations"); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:25-cv-00167 (MSS), 2025 U.S. Dist. LEXIS 155594, at *5–6 (M.D. Fla. Aug. 12, 2025) (same); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-cv-00054 (HG), 2025 U.S. Dist. LEXIS 129998, at *5 (E.D.N.Y. July 2, 2025) (same).[4] Therefore, Plaintiff cannot claim an express right of action under the NSA to confirm an IDR determination under § 9 of the FAA, as it attempts to do in Count I. Nor can Plaintiff claim any provision of the NSA provides a right to privately enforce an alleged substantive violation of the NSA as alleged in Count II. *See Sullivan v. Stroop*, 496 U.S. 478, 482 (1990) ("If the statute is clear and unambiguous that is the end of the matter, for the court . . . must give effect to the unambiguously expressed intent of Congress.") (internal quotation marks omitted).

B. The NSA Does Not Provide an *Implied* Right of Action to Confirm or Enforce an IDR Determination Under the FAA or the NSA

Plaintiff also cannot establish that Congress, "through clear and unambiguous terms," created new implied enforceable rights under the NSA. *Gonzaga Univ.*, 536 U.S. at 290. Much to the contrary, the text, structure, and context of the NSA unequivocally evince Congress's intent *not* to create a new right to seek judicial confirmation of IDR determinations or enforcement of alleged NSA violations in federal district court. And Plaintiff cannot meet its burden to prove otherwise.

"Implied rights of action are 'disfavored,'" when not expressly created by statute. *Peterson*

[4] Even *Guardian Flight v. Aetna*—the lone, unpublished decision that found an *implied* right of action to enforce an IDR award—held that "[t]he NSA does not . . . expressly create a private right of action to enforce [IDR award] payment requirements." *Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-cv-00680 (MPS), 2025 U.S. Dist. LEXIS 91676, at *17 (D. Conn. May 14, 2025) ("*Guardian Flight v. Aetna*").

v. Bank Markazi, 121 F.4th 983, 1003 (2d Cir. 2024) (quoting *Moya v. U.S. Dep't of Homeland Sec.*, 975 F.3d 120, 128 (2d Cir. 2020)). Because no provision of the NSA explicitly provides a private right of action to confirm an IDR determination, this court must "begin with the presumption that Congress did not intend one." *Bellikoff*, 481 F.3d at 116. A federal court may not infer a private right of action except "when there is explicit evidence of Congressional intent[.]" *Cenzon-DeCarol*, 626 F.3d at 697. "When analyzing whether a statute implies a private right of action, [the] 'interpretive inquiry begins with the text and structure of the statute and ends once it has become clear that Congress did not provide a cause of action.'" *Moya*, 975 F.3d at 128 (quoting *Sandoval*, 532 U.S. at 288 n.7). "In considering whether a statute confers an implied private right of action, 'the judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy.'" *Republic of Iraq*, 768 F.3d at 170 (quoting *Sandoval*, 532 U.S. at 286). "Statutory intent on this latter point is determinative," because "[w]ithout it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Sandoval*, 532 U.S. at 286–87. Accordingly, "the text and structure of the statute" must "yield a clear manifestation of congressional intent to create a private cause of action before a court can find such a right to be implied." *Lopez v. Jet Blue Airways*, 662 F.3d 593, 596 (2d Cir. 2011).

The Second Circuit has recognized that *Sandoval* "strictly curtailed the authority of the courts to recognize implied rights of action[.]" *Lopez*, 662 F.3d at 596; *see also Republic of Iraq*, 768 F.3d at 170 (noting that "the Supreme Court has come to view the implication of private remedies in regulatory statutes with increasing disfavor." (quoting *Hallwood Realty Partners, L.P. v. Gotham Partners, L.P.*, 286 F.3d 613, 618 (2d Cir. 2002)). Since *Sandoval*, the Second Circuit has therefore repeatedly declined to create implied private causes of action when Congress did not

expressly grant that right. *See, e.g.*, *Murphy Med. Assocs., LLC v. Yale Univ.*, 120 F.4th 1107, 1112 (2d Cir. 2024) (affirming district court dismissal because the applicable provisions at issue in the Families First Coronavirus Response Act, and the Coronavirus Aid, Relief, and Economic Security Act do not provide express or implied private rights of action); *Republic of Iraq*, 768 F.3d at 171 (affirming district court's dismissal because Foreign Corrupt Practices Act does not provide a private right of action); *Lopez*, 662 F.3d at 597–98 (affirming district court's dismissal because the Air Carrier Access Act does not provide a private right of action); *Bellikoff*, 481 F.3d at 114 (affirming district court's dismissal because applicable provisions of the Investment Company Act at issue do not provide implied private rights of action); *George v. NYC Dep't of City Planning*, 436 F.3d 102, 103 (2d Cir. 2006) (affirming district court's dismissal that the Coastal Zone Management Act does not provide a private right of action).[5]

And though one court in this district created a new, implied right of action to enforce an IDR determination, its unpublished decision interpreted a separate provision of the NSA governing reimbursement of air ambulance services not applicable here, acknowledged that it did not fully consider administrative enforcement provisions of the NSA, was made prior to, and without the benefit of, the Fifth Circuit's decision, and reached a conclusion different from every other court that has fully considered the issue. *See E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *46 (noting that "all but one court to consider the question have held that there is no private right of action under the NSA to enforce IDR awards").

[5] *See also McArthur v. C-Town Super Mkt.*, No. 3:21-cv-00972 (SRU), 2022 U.S. Dist. LEXIS 134050, at *10 (D. Conn. July 28, 2022) (finding no private right of action under 15 U.S.C. § 45); *Schlosser v. Droughn*, No. 3:19-cv-01445 (SRU), 2021 U.S. Dist. LEXIS 178379, at *23 (D. Conn. Sep. 20, 2021) (finding no private right of action under 42 U.S.C. § 2000d-2 or U.S.C. § 2000d-7); *Cogdell v. Cogdell*, No. 3:17-cv-00795 (SRU), 2018 U.S. Dist. LEXIS 18304, at *5–6 (D. Conn. Feb. 5, 2018) (finding no private right of action under 42 U.S.C. § 408).

1. The Text of the NSA Does Not Explicitly Evince Clear Congressional Intent to Create a Private Right of Action to Enforce an IDR Determination

As set forth in Section I.A, *supra*, Congress explicitly confined the right to seek judicial review under the NSA to actions to vacate an IDR award under the circumstances set forth under § 10(a) of the FAA. And despite explicitly referencing § 10(a) of the FAA, Congress conspicuously did not incorporate § 9. Because Congress incorporated only § 10(a) of the FAA into the NSA (and not § 9), and because Congress explicitly limited the right to obtain judicial relief only to actions brought under § 10(a)—the text is clear that an action to confirm or enforce an arbitration award "shall not be subject to judicial review." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); *see also Guardian Flight*, 140 F.4th at 276 (noting that "Congress chose not to incorporate § 9 [of the FAA] into the NSA," but rather "incorporated only parts of § 10").

First, under settled principles of statutory construction, the choice to incorporate § 10(a) of the FAA but not § 9, reflects Congress's intent *not* to allow private lawsuits seeking to confirm IDR awards, because the inclusion of one section of a statute, § 10(a), implies the exclusion of another, § 9. *See Esteras v. United States*, 145 S. Ct. 2031, 2040 (2025) (noting that under the "well-established canon of statutory interpretation: '*expressio unius est exclusio alterius*'" the "'expressing of one item of an associated group or services excludes another left unmentioned'") (quoting *Chevron U. S. A. Inc. v. Echazabal*, 536 U.S. 73, 80 (2002)); *see also Azar v. Allina Health Servs.*, 587 U.S. 566, 576–77 (2019) (holding that where "[i]n the Medicare Act, Congress expressly borrowed one of the [Administrative Procedure Act's ("APA")] exemptions . . . by cross-referencing it" but did not cross-reference another of the APA's exemptions, "Congress's choice to include a cross-reference to one but not the other of the APA's neighboring exemptions *strongly suggests* it acted 'intentionally and purposefully in the disparate' decisions") (emphasis added) (citation omitted). Such an "omission cannot be viewed as accidental or inconsequential."

City & Cty. of S.F. v. EPA, 145 S. Ct. 704, 717 (2025). Instead, this Court should treat Congress's choice to include § 10(a) but omit § 9 of the FAA as intentional and deliberate. Thus, "Congress's explicit provision of a private right of action to enforce one section of a statute," here, the right to seek judicial vacatur of IDR awards under 9 U.S.C. § 10(a), "suggests that omission of any explicit private right to enforce [under § 9] was intentional." *Bellikoff*, 481 F.3d at 116 (quoting *Olmsted*, *Pruco Life Ins. Co.*, 283 F.3d 429, 433 (2d Cir. 2002)). When viewed through this lens, the "natural implication is that Congress did not intend courts" to review actions to confirm an IDR award. *Esteras*, 145 S. Ct. at 2034.

As explained by the Fifth Circuit, Congress is familiar with how to incorporate § 9 of the FAA into a statute to create a private right of action, and has done so before. *See Guardian Flight*, 140 F.4th at 276 (citing 5 U.S.C. § 580(c) ("A final award is binding on the parties to the arbitration proceeding, and may be enforced pursuant to sections 9 through 13 of" the FAA)). "So, Congress knew how to create a private right of action in the NSA—and has done so elsewhere—but declined to do so." *Id.* (citing cases). "Obviously, then, when Congress wished to provide" a mechanism for judicial review, "it knew how to do so and did so expressly." *Touche Ross v. Redington*, 442 U.S. 560, 571–72 (1979), 442 U.S. at; *see also Rotkiske*, 589 U.S. at 14 ("A textual judicial supplementation is particularly inappropriate when, as here, Congress has shown that it knows know to adopt the omitted language or provision."). Indeed, "[w]hen Congress omits from a statute a provision found in similar statutes, the omission is typically thought deliberate." *Turtle Island Restoration Network v. Evans*, 284 F.3d 1282, 1296 (Fed. Cir. 2002) (citing *I.N.S. v. Phinpathya*, 464 U.S. 183, 190 (1984)); *see also Howard Univ. Hosp. v. D.C. Dep't of Empl. Servs.*, 952 A.2d 168, 174 (D.C. 2008) ("Where a statute, with reference to one subject, contains a given provision, the omission of such [a] provision from a similar statute concerning a related subject . . . is

significant to show [that] a different intention existed." (quoting *Smith v. D.C. Dep't of Emp. Servs.*, 548 A.2d 95, 100 n.13 (D.C. 2008)).

Second, confirmation that Congress did not intend to imply a private right of action can be derived from the text itself. Under the NSA, an IDR award "*shall not be subject to judicial review*," except in an action brought under § 10(a)(1)–(4) of the FAA, which authorizes courts to *vacate* an arbitral award, and is thus not applicable here. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) (emphasis added). Thus, the statute explicitly directs that a court may not exercise judicial review over IDR awards *except* in an action brought to vacate an IDR determination under § 10(a) of the FAA. Not only did Congress decline to incorporate § 9 of the FAA into the NSA, it also explicitly *limited* judicial review to actions brought under § 10(a) of the FAA. Congress therefore closed the door to any right of action under the NSA beyond an action to vacate an arbitration award under § 10(a) of the FAA. *Cf. Patchak v. Zinke*, 583 U.S. 244, 254 (2018) (noting that "congressional grant of jurisdiction is a *prerequisite* to the exercise of judicial power") (emphasis in original). Thus, by the NSA's plain text, Congress granted district courts jurisdiction to review petitions to *vacate* IDR awards under § 10(a); Congress did not grant district courts jurisdiction to review petitions to *confirm* IDR awards under § 9, or otherwise enforce IDR awards.

2. The Structure and Context of the NSA Confirm Congress's Choice to Omit a Private Right of Action

The choice not to create a private right of action to confirm or enforce an IDR award further comports with the larger structure of the NSA and, more broadly, of the Public Health Services Act ("PHSA"), 42 U.S.C. § 300gg *et seq.*, which the NSA amends. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 320 (2014) (explaining the "fundamental cannon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme") (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133

(2000)). Instead, the structure of the NSA shows that Congress granted HHS authority to enforce IDR determinations and, in doing so, precluded others, including district courts, from dueling authority to review and enforce the statute. *See Sandoval*, 532 U.S. at 290 ("The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.").

Under the NSA, Congress vested HHS and other agencies with enforcement authority and regulatory oversight over the IDR process. HHS accepts provider complaints, including those that concern alleged late- and non-payment of IDR awards, and performs complaint-based audits to enforce the NSA's provisions. *See* 42 U.S.C. §§ 300gg-111(a)(2), 300gg-134(b)(3). Congress further empowered HHS to impose per day monetary civil penalties for failure to comply with the NSA. *See* 42 U.S.C. § 300gg-22(b)(2); 45 C.F.R. § 150-301 *et seq.* (subjecting payers under CMS's enforcement authority to the imposition of civil monetary penalties for failure to comply with PHSA requirements); *see also Guardian Flight*, 140 F.4th at 276. HHS has acted on that authority by soliciting provider complaints and compelling payers to pay IDR awards where appropriate. GAO-24-106335, at 35. Providers who believe a payer is not complying with the federal IDR process or want to report a violation of the NSA may submit complaints to HSS through a dedicated online portal.

The robust administrative enforcement scheme applicable to the NSA further sets forth administrative review and fair hearing processes for payers to challenge the imposition of monetary penalties for violations of the law. *See* 42 U.S.C. § 300gg-22(b)(2)(D). And, HHS may also refer disobedient payers that fail to remit a monetary penalty to the Attorney General for recovery through judicial enforcement. *See id.* at § 300gg-22(b)(2)(F).

The existence of a detailed administrative remedy is strong evidence that Congress

intended it to be the exclusive remedy. *N.Y. Inst. of Dietetics v. Great Lakes Higher Educ. Corp.*, No. 94-cv-04858 (LLS), 1995 U.S. Dist. LEXIS 13692, at *9 (S.D.N.Y. Sept. 19, 1995) ("Congress's delegation of extensive enforcement power to the Secretary supports a finding that the administrative remedy is exclusive."). Several courts have reached a similar result under the NSA. *See generally Guardian Flight, 140 F.4th at 275*; *Jeffrey Farkas, M.D.*, 2025 U.S. Dist. LEXIS 129998, at *5; *FHMC LLC v. Blue Cross & Blue Shield of Ariz. Inc.*, No. 23-cv-00876 (PHX), 2024 U.S. Dist. LEXIS 62018, at *3 (D. Ariz. Apr. 3, 2024); *Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, at 1087 (M.D. Fla. 2023), *appeal dismissed*, 2024 U.S. App. LEXIS 17493 (11th Cir. May 30, 2024); *Los Robles Emergency Physicians Med. Grp. v. Stanford-Franz*, No. 2:23-cv-09487 (DSF), 2024 U.S. Dist. LEXIS 23971, at *4 (C.D. Cal. Feb. 8, 2024). Plaintiff alleges that Cigna violated the NSA, "[b]ut 'the fact that a federal statute has [allegedly] been violated and some person [allegedly] harmed does not automatically give rise to a private cause of action in favor of that person.'" *Cogdel*, 2018 U.S. Dist. LEXIS 18304, at *5 (quoting *Touche Ross & Co.*, 42 U.S. at 568). Where, as here, a statute provides administrative remedies and enforcement, there is a presumption that Congress did not intend to create a private right of action, but rather provided precisely the remedies it considered appropriate. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 253 (2009) ("[W]e have placed *primary emphasis* on the nature and extent of [a] statute's remedial scheme.").

By delegating authority to enforce a payer's failure to pay an IDR determination to HSS, Congress showed its intent not to create an implicit private enforcement scheme. "This inference from the NSA's broader structure, then, is plain," that "[t]he NSA's structure conveys Congress's policy choice to enforce the statute through administrative penalties, not a private right of action." *Guardian Flight*, 140 F.4th at 277; *see also FHMC LLC*, 2024 U.S. Dist. LEXIS 62018, at *9 ("An

implied right of action" under the NSA "is incongruous with such a detailed statutory scheme, in which judicial review is limited to specific instances."). Accordingly, "[t]he availability of these alternative mechanisms to enforce the [NSA] strongly suggests that Congress did not intend to imply a superfluous private right of action." *Moya*, 975 F.3d at 128.

3. The FAA Does Not Apply Here Because There is No Agreement Between the Parties to Arbitrate the Dispute

Section 9 of the FAA also does not fit within the structure of the NSA because there is no underlying arbitration agreement between Plaintiff and Cigna, and the parties did not agree to have the IDR award entered by a judgment of this Court. Section 9 of the FAA reads, in part:

> If the parties *in their agreement* have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made.

9 U.S.C. § 9 (emphasis added).

By its plain text, § 9 is limited to an "agreement" between the parties. 9 U.S.C. § 9. A district court cannot confirm an arbitration award if the party seeking confirmation fails to make a colorable showing of a valid agreement to arbitrate. *Schnabel v. Trilegiant Corp.*, 697 F.3d 110, 118 (2d. Cir. 2012); *see also Robinson v. Macy's Inc.*, 772 F. Supp. 3d 253, 259–60 (D. Conn. 2025) (holding the "threshold question" is "whether the parties have indeed agreed to arbitrate") (quoting *Schnabel*, 697 F.3d at 118); 9 U.S.C. § 13 (requiring a party seeking an order confirming an arbitration award to file, among other things, the agreement and the award).

Here, there is no allegation that there is an agreement between the parties. To the contrary, Plaintiff claims that it "does not have a network contract" with Cigna (Compl. ¶ 7), or an

underlying arbitration agreement, (*id.* ¶ 68). Nor is a contract created by the existence of an IDR determination pursuant to the NSA. And importing § 9 into the NSA would render superfluous the requirement under § 13(a) that a party seeking an order confirming an award file the arbitration agreement along with its motion—which Plaintiff did not and cannot do here. 9 U.S.C. § 13(a); *see Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (stating that the "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme"). Thus, § 9 of the FAA plainly does not fit within the pre-existing structure of the NSA and cannot be used to enforce the arbitration award here. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 328 (2015) (instructing that an implied right of action is unavailable when, among other things, the "nature of [the statutory] text" is "judicially unadministrable"); *see also E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *47 (applying *Armstrong* to the NSA).

C. The Overwhelming Majority of Courts to Consider This Issue Have Held The NSA Does Not Create a Right of Action to Confirm or Enforce an IDR Determination

In *Guardian Flight*, the Fifth Circuit held unequivocally that the NSA "provides no private right of action," and upheld dismissal of various claims brought by two providers against a health care payer for failing to timely pay an IDR award issued under the NSA. 140 F.4th at 273–74. The court determined that by its plain text, the NSA provides no express or implied right of action that would permit private parties to enforce alleged violations of the law. *Id.* at 275.

More recently, district courts have benefitted from the Fifth Circuit's decision that "under the NSA's plain text and structure," Congress did not create a private right to confirm or enforce an IDR award. *Id.* at 277 n.5. Several district courts, including courts within the Second Circuit, have overwhelmingly held that the NSA does not create a private right of action to seek judicial confirmation of an IDR award under § 9 of the FAA. *See E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *46 (concluding that "[t]he statutory text . . . forecloses of a private right of

action to enforce IDR determinations") (citing cases); *Worldwide Aircraft*, 2025 U.S. Dist. LEXIS 155594, at *5–6 (holding the NSA "does not authorize this Court to confirm or enforce the IDR awards"); *Jeffrey Farkas, M.D.*, 2025 U.S. Dist. LEXIS 129998, at *5 (concluding that the court lacked subject-matter jurisdiction because "the NSA contains no express right of action to enforce or confirm an IDR award, nor does it contain an implied private right of action to do the same." (cleaned up)); *Med-Trans Corp.*, 700 F. Supp. 3d at 1087 (same); *FHMC LLC*, 2024 U.S. Dist. LEXIS 62018, at *9 ("An implied right of action is incongruous with such a detailed statutory scheme, in which judicial review is limited to specific instances."); *Los Robles*, 2024 U.S. Dist. LEXIS 23971, at *4 (concluding that "the No Surprises Act fails to provide a private right of action"); *see also Haller v. United States HHS*, 2024 U.S. App. LEXIS 1477, at *2 n.1 (2d Cir. Jan. 23, 2024) (finding that the district court correctly determined that the existence of a common-law cause of action against patients did not mean that providers had a private right under the NSA to recover against payers).

Most recently, the Southern District of New York held that the NSA "supplies an administrative remedy for NSA violations—the IDR process—which is itself, by statute, subject to oversight and enforcement by [HHS]." *E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *47–48. In looking to the plain text of the NSA, *East Coast* continued that "beyond providing an alternative remedy, the statute expressly provides that IDR processes 'shall not be subject to judicial review' . . . thus foreclose[ing] of a private right of action to enforce IDR determinations." *Id.* at *48 (quoting 29 U.S.C. § 1185e(b)(5)(E)(i)(II)).

Faced with the same question, the Eastern District of New York also concluded that it lacked subject-matter jurisdiction to confirm an arbitral award issued under the NSA pursuant § 9 of the FAA because "[t]he NSA plainly does not provide for the confirmation of awards[.]" *Farkas,*

M.D., 2025 U.S. Dist. LEXIS 129998, at *3. Accordingly, *Farkas M.D.* held that "'the NSA contains no express right of action to *enforce* or *confirm* an IDR award,' nor does it contain an implied private right of action to do the same." *Id.* at *13–14 (quoting *Guardian Flight*, 140 F.4th at 275 (emphasis in the original)). "[B]y seeking confirmation here, [Plaintiff] asks the Court to impermissibly invent a cause of action to confirm an award under the NSA" which "[i]t may not do[.]" *Id.* at *14.

The sole outlier is *Guardian Flight v. Aetna*, which stands alone as the *only* court to have found an implied private right of action under the NSA to enforce an IDR award.[6] Respectfully, Cigna submits that this Court should not follow the reasoning of the unpublished and nonbinding *Guardian Flight v. Aetna* decision for several reasons.

First, the court held that "the NSA contains strong, mandatory language regarding health plans' and insurers' payment obligations and the 'binding' effect of IDR awards," and that "such mandatory text 'often reflects congressional intent to create both a right *and* a remedy' for the individuals to whom payment is due." *See* 2025 U.S. Dist. LEXIS 91676, at *20 (quoting *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 324 (2020)). But, for the reasons stated *supra*

[6] Plaintiff cites two cases for support that federal courts have found authority to confirm arbitration awards issued pursuant to the NSA under § 9 of the FAA. (Compl. ¶ 69.) But neither case supports Plaintiff's position on the legal arguments raised here. In both *GPS of N.J. M.D. v. Horizon Blue Cross & Blue Shield* and *Worldwide Aircraft Services, Inc. v. Worldwide Insurance Services, LLC* the courts in unpublished decisions denied petitions to vacate IDR awards and, when doing so, perfunctorily granted motions to confirm the awards. *See GPS of N.J. M.D. v. Horizon Blue Cross & Blue Shield*, No. 22-06614 (KM), 2023 U.S. Dist. LEXIS 159460 (D.N.J. Sept. 8, 2023); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:24-cv-00840 (TPB), 2024 U.S. Dist. LEXIS 167943 (M.D. Fla. Sept. 18, 2024). But none of the parties to those cases contested the court's subject matter jurisdiction to confirm an IDR award, nor do the opinions suggest the courts otherwise considered the issue. In fact, in a later case involving the same parties as *Worldwide Aircraft Services. Inc. v. Worldwide Insurance Services, LLC*, the court found that it "lack[ed] subject matter jurisdiction to confirm or enforce an IDR award under the No Surprises Act" when the issue was affirmatively raised in the second action. *See Worldwide Aircraft Servs. Inc.*, 2025 U.S. Dist. LEXIS 155594, at *6.

in Section I.B, *Guardian Flight v. Aetna* misreads the framework of the NSA as enacted by Congress. The "strong, mandatory text" of the NSA is insufficient to establish a private right of action; rather, reviewing the "text of the whole statute" reveals no intention for the "binding" effect of IDR determinations to create a right of action to confirm or enforce IDR awards. *Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 414 (2017) (citation omitted).

Moreover, the court's isolated reading of the provision that IDR awards shall be "binding upon the parties involved," as evincing an implied right disregards the interpretive principle that provisions of a statute should be read harmoniously. *See Biden v. Texas*, 597 U.S. 785, 827 (2022) (describing the harmonious-reading canon). Rather, subparagraph (I) of 42 U.S.C. § 300gg-111(c)(5)(E)(i) must be interpreted alongside subparagraph (II) so as to read the parallel provisions in unity. Because subparagraph (II) limits judicial review to vacatur actions under § 10(a) of the FAA, subparagraph (I) cannot be read to *imply* jurisdiction of this court to confirm an IDR award under § 9 when its sister provision explicitly forbids it. And neither provision extends judicial review to an action to enforce or confirm an IDR determination under § 9 of the FAA.

To the extent Congress wanted to create a private right of action to confirm or enforce an IDR determination, it could have written the statute differently, either by expressly incorporating § 9 of the FAA into 42 U.S.C. § 300gg-111(c)(5)(E)(i), or by not enacting text that explicitly limits the jurisdiction of this court. *See Guardian Flight*, 140 F.4th at 276 (citing statutes where Congress create a private right of action to enforce an arbitration award under § 9 of the FAA). Instead, the better reading of the statute shows Congress's deliberate choice to enact a bifurcated regulatory scheme that authorizes enforcement of "binding" IDR awards to HHS and other administrative agencies tasked with implementation and oversight of the NSA, and authorizes judicial review over more complex, fact-determinative actions to vacate IDR awards using the framework set forth

under § 10(a) of the FAA. Not only does the alternate reading of the NSA fail to show an implied right "though clear and unambiguous terms," *Gonzaga Univ.*, 536 U.S. at 290, in fact "the NSA's text and structure point in the opposite direction," *Guardian Flight*, 140 F.4th at 275.

Second, *Guardian Flight v. Aetna* did not interpret 42 U.S.C. § 300gg-111, which is the section of the NSA applicable here. Instead, the court interpreted 42 U.S.C. § 300gg-112, which governs reimbursement for air ambulance services. 2025 U.S. Dist. LEXIS 91676, at *5–7. And while similarities exist between the two sections of the NSA, the court acknowledged that certain HHS oversight and auditing functions contained in 42 U.S.C. § 300gg-111 are not found in § 300gg-112.[7] *See id.* at 23 n.7.

Third, the court acknowledged that it did not fully consider the administrative enforcement mechanisms enacted under the NSA.[8] So the court's concern that IDR awards would be rendered "meaningless" without a judicial remedy was made without review of 42 U.S.C. § 300gg-22(b)(2), which extends enforcement authority of the NSA to HHS and, among other remedies, "empower[s] HHS to assess penalties against insurers for failure to comply with the NSA." *Guardian Flight*, 140 F.4th at 227 (citing 42 U.S.C. § 300gg-22(b)(2)(A) *and* 45 C.F.R. § 150.301 *et seq*.). Thus, as explained *supra*, Section I.B.2, providers are not left without a remedy if an award is unpaid. *Cf. Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at *21–22. These built-in administrative enforcement mechanisms show that an IDR award is not "meaningless" or "effectively unenforceable," and that Congress's drafting does not lead to an absurd result.[9] *Guardian Flight*

[7] The court carefully qualified its finding that the NSA uses "rights-creating language," and was made solely "with respect to air ambulance providers." 2025 U.S. Dist. LEXIS 91676, at *17.

[8] The court "declined to consider" whether 42 U.S.C. § 300gg-22 provides a mechanism to enforce timely payment of IDR awards under the NSA because the parties did not address § 300gg-22 in their briefs. 2025 U.S. Dist. LEXIS 91676, at *21 n.7.

[9] In dicta, *Guardian Flight v. Aetna* suggested that "it is unlikely that any such enforcement scheme [under 42 U.S.C. § 300gg-22] could police insurers' and health plans' compliance with each IDR

v. Aetna, 2025 U.S. Dist. LEXIS 91676, at *21–22. With full consideration of the administrative enforcement scheme, and the benefit of the Fifth Circuit's reasoning, the court may have found an implied right of action unavailable. *See Armstrong*, 575 U.S. at 328 ("[T]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.") (citation modified).

Fourth and lastly, the court overlooked the requirement that to find an implied right of action, Congress must intend to create not only a private right but also a private remedy. *See Republic of Iraq*, 768 F.3d at 170; *see also Sandoval*, 532 U.S. at 286. According to the court, because payers' payment obligations are "binding," "such mandatory text 'often reflects congressional intent to create both a right *and a remedy*' for the individuals to whom payment is due.'" *Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at *20 (quoting *Maine Cmty.*, 590 U.S. at 324) (emphasis in the original). But, again, the court discounted the carefully crafted administrative remedial and enforcement scheme Congress put in place. Moreover, and with a view toward Congress's express *limitation* on judicial review within the same provision, the NSA fails to show "explicit evidence of Congressional intent" to create a judicial remedy. *Cenzon-DeCarol*, 626 F.3d at 697.

In sum, *Guardian Flight v. Aetna* stands alone[10] in its conclusion that the text of the NSA

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determination." 2025 U.S. Dist. LEXIS 91676, at *21 n.6. But "the wisdom of Congress's policy choice is beyond [the court's] judicial ken." *Guardian Flight*, 140 F.4th at 277. Moreover, the court's elevation of policy considerations such as HHS's supervisory capabilities conflicts with *Sandoval*'s instruction that courts may not create a cause of action without determinative textual support "no matter how desirable that might be as a policy matter[.]" *Sandoval*, 532 U.S. at 286–87. And courts may not "circumvent Congress's exclusion of private enforcement," by "invoking [their] equitable powers." *Armstrong*, 575 U.S. at 327.

[10] The courts in *Guardian Flight*, *E. Coast Advanced*, *and Jeffrey Farkas, M.D.*, all declined to adopt the *Guardian Flight v. Aetna* holding. *See Guardian Flight*, 140 F.4th at 277 n.5; *E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *46–47; *Jeffrey Farkas, M.D.*, 2025 U.S. Dist. LEXIS 129998, at *14.

demonstrates in "clear and unambiguous terms" that Congress intended to authorize an implied private right of action. *Gonzaga Univ.*, 536 U.S. at 290. The court's expansive interpretation of the NSA to find an implied private right of action is further contrary to the general principle adopted in this Circuit that "implied rights of actions are disfavored." *Moya*, 975 F.3d at 128; *see also Olmstead*, 283 F.3d at 432 ("A court . . . cannot ordinarily conclude that Congress intended to create a right of action when none was explicitly provided.").

As explained *infra*, the NSA bars any "judicial review" of IDR awards other than the vacatur provisions of 9 U.S.C. § 10(a); omits any terms authorizing a private action to confirm or enforce an IDR award, such as through 9 U.S.C. § 9; and establishes an administrative scheme to enforce a payer's failure to pay an IDR award. In sum, because the NSA does not provide for a right of action to seek judicial confirmation of an arbitration award under § 9 of the FAA or enforcement of the NSA itself, the Court should deny the Complaint in its entirety.

II. PLAINTIFF IS TIME BARRED FROM SEEKING CONFIRMATION OF AT LEAST ONE DETERMINATION

Even assuming Plaintiff could obtain judicial confirmation of an IDR determination under § 9 of the FAA—which it cannot—Plaintiff is barred from obtaining judicial confirmation of the IDR determination for patient M.L. because the Complaint is untimely. Section 9 of the FAA sets a clear deadline to petition for confirmation of an arbitration award—within one year after the award is made. *See* 9 U.S.C. § 9. But Plaintiff did not file this action within one year from the date when the CIDRE decided the underlying IDR proceeding for services provided to patient M.L., which was March 6, 2024. (Compl. ¶ 19.)

Under § 9 of the FAA, "at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award," upon proper notice. 9 U.S.C. § 9. The Second Circuit has held that "section 9 of the FAA imposes a one-year

statute of limitations on the filing of a motion to confirm an arbitration award under the FAA." *Photopaint Techs., LLC v. Smartlens Corp.*, 335 F.3d 152, 158 (2d Cir. 2003).

At Paragraphs 13 to 23 of the Complaint, Plaintiff sets forth allegations concerning surgical services rendered to Patient M.L., and the IDR process it initiated to challenge Cigna's reimbursement for those services under the NSA. (Compl. ¶¶ 13–23.) Specifically, at Paragraph 19, Plaintiff alleges that

> [o]n March 6, 2024, the CIDRE, Federal Hearings and Appeals Service, Inc., ruled in Plaintiff's favor under Arbitration Dispute DISP-878778, awarding Plaintiff a total of $97,500.00 for CPT Code 19364. See Exhibit A, attached hereto.

(Compl. ¶ 19.)

Plaintiff also attached the alleged IDR determination issued by Federal Hearings and Appeals Services, Inc. for dispute reference number DISP-878778. (Compl., Ex. A.) The IDR determination provides that the 90-day cooling off period under the NSA begins on March 6, 2024, the date of the award. (ECF No. 1-1.) When accepting the allegations in the Complaint as true, Plaintiff therefore claims that the CIDRE made its award for DISP-878778 on March 6, 2024. Under § 9 of the FAA, Plaintiff had until March 5, 2025 to apply for an order confirming the IDR determination. Plaintiff did not commence this action, however, until March 27, 2025. (ECF No. 1.) Plaintiff therefore did not apply "for an order confirming the award" "within one year after the award [was] made." 9 U.S.C. § 9. Plaintiff is therefore time barred from obtaining confirmation of DISP-878778.

Plaintiff alleges, however, that because Cigna had 30 days to pay the IDR award, "the *effective* date of the arbitration award is April 5, 2024," thereby resuscitating its otherwise untimely action. (Compl. ¶ 20 (emphasis in the original).) Not so. Plaintiff's proposed interpretation of § 9 fails for at least two reasons.

First, Plaintiff asks this court to re-write the unambiguous text of § 9 to make confirmation timely here. But § 9 is clear: a party may obtain judicial confirmation of an arbitration award upon application "within one year after the award is *made*," not when the award is *effective* (emphasis added). 9 U.S.C. § 9. Plaintiff impermissibly seeks to amend § 9 by striking "made" from the statute and inserting "effective." But Plaintiff's amendment to § 9 would not "apply faithfully the law Congress has written[.]" *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017). Rather, when interpreting a statute, a court's "role is to apply the law, not rewrite it[.]" *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 63 (2024); *see also Sobell v. United States*, 407 F.2d 180, 183 (2d Cir. 1969) (Moore, J., concurring) (noting that "[t]he proper function of the courts is to apply the law as enacted – not rewrite it"). "The place to make new legislation, or address unwanted consequences of old legislation, lies in Congress." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654–55 (2020). Here, and by Plaintiff's own account, the CIDRE *made* the IDR determination on March 6, 2024. (Compl. ¶ 19.) Accordingly, under the plain text of § 9, Plaintiff had until March 5, 2025 to apply for confirmation of the award. Plaintiff did not file this action by that date.

Second, even if this Court could disregard the clear temporal limitation of § 9, Plaintiff cites no support under the NSA or FAA for its argument that an IDR determination is not *effective* until 30 days after it is *made*. Under the NSA, the CIDRE must notice the parties of its IDR determination within 30 days of its selection. 42 U.S.C. § 300gg-111(c)(5)(A). The non-prevailing party then has "30 days after the date on which such *determination is made*" to pay the IDR award. *Id.* at 300gg-111(c)(6) (emphasis added). Thus, when reading the NSA and FAA together, the date on which the IDR determination is *made* starts the clock for purposes of setting the deadline for payment under the NSA and the statute of limitations under the FAA. Nothing in the NSA suggests

an IDR determination is "effective" on any other date. Moreover, Plaintiff's illogical interpretation also clashes with the "timing of payment" provision of the NSA. Under the route suggested by Plaintiff, the date the IDR becomes effective and the date when payment is due would be the same date. Such a revision would render the "timing of payment" provision superfluous or inoperative. *See id.* And Plaintiff's reading further calls into question the effective date of an IDR award when payment is made before 30 days elapses.

Under § 9 of the FAA, the clock started ticking for purposes of the statute of limitations on the date the IDR determination was made. When accepting Plaintiff's allegations as true, the CIDRE made its determination of DISP-878778 on March 6, 2024. Because Plaintiff did not commence this action by March 5, 2025, Plaintiff is barred from obtaining an order confirming that award. Thus, even assuming the FAA applies—which it does not—Plaintiff cannot obtain confirmation of DISP-878778 related to reimbursement for surgical services allegedly provided to patient M.L.

CONCLUSION

For the foregoing reasons, Cigna respectfully requests the Court to dismiss Plaintiff's Complaint in its entirety and with prejudice.

Dated: September 26, 2025
Newark, New Jersey

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ORAL ARGUMENT REQUESTED

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD, Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	Civil Action No. 25-00498-SRU *Document electronically filed*

[PROPOSED] ORDER GRANTING DEFENDANT CIGNA HEALTH AND LIFE INSURANCE COMPANY'S MOTION TO DISMISS PLAINTIFF RICHARD AGAG, MD'S COMPLAINT

THIS MATTER, having been brought before the Court by way of motion filed by Defendant Cigna Health and Life Insurance Company ("Cigna"), through its attorneys, Gibbons P.C., for an Order pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) dismissing Plaintiff Richard Agag, MD's Complaint (ECF No. 1); and the Court having considered the papers submitted in support of Cigna's Motion, and any opposition thereto, and for good cause shown,

IT IS, on this _____ day of _____, 2025

ORDERED that Cigna's Motion to Dismiss is hereby **GRANTED**; and it is further

ORDERED that Plaintiff's Complaint is hereby dismissed with prejudice.

Dated: October __, 2025

_____
The Honorable Stefan R. Underhill, U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY Defendant.	:	Case No.: 3:25-cv-00498-SRU November 21, 2025

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE COMPLAINT AND IN SUPPORT OF PLAINTIFF'S CROSS-MOTIONS TO CONFIRM AND FOR SUMMARY JUDGMENT

Respectfully submitted,

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ORAL ARGUMENT REQUESTED

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OTHER:

Plaintiff Richard Agag, MD ("Plaintiff") respectfully submits this Memorandum of Law in Opposition to Defendant Cigna Health and Life Insurance's ("Defendant") Motion to Dismiss Plaintiff's Complaint ("Motion") and in support of Plaintiff's Cross-Motions to Confirm and for Summary Judgment.

PRELIMINARY STATEMENT

As a result of Defendant's refusal to abide by its legal obligation to pay arbitration awards issued under the Independent Dispute Resolution ("IDR") process of the Federal No Surprises Act ("NSA"), Plaintiff commenced this action. Awards were issued in Plaintiff's favor in the following IDR disputes: DISP-878778, DISP-2001877, DISP-2001876, DISP-2001874, and DISP-2001871 (the "Awards"). Defendant does not, because it cannot, dispute that the NSA confers an unequivocal legal obligation to pay the Awards. The undisputed facts demonstrate that the Awards were entered in Plaintiff's favor in each of the IDR disputes and that Defendant has refused to pay the Awards. Further, Defendant has not moved to vacate any of the Awards, as there is no legal basis to support any result other than confirmation or judgment in this matter. While payment was due within 30 days of the issuance of each Award as per the NSA's rules, such time has long since passed and Defendant remains in default of its legal obligation to pay the Awards.

Defendant does not dispute that it has failed to pay the Awards and offers no justification for its failure to do so. Rather, Defendant argues that the Awards cannot be enforced under the Federal Arbitration Act ("FAA") and the NSA does not include a private cause of action. As such, Defendant has officially taken the position that it is entitled to ignore its legal obligations, immune from judicial intervention and accountability, even where there is no exclusive jurisdiction conferred upon the administrative agencies tasked with administering the NSA. This position is unfounded, and the Motion should be denied.

At least three federal courts, including this District, have already ruled that the federal judiciary can enforce IDR awards under Section 9 of the FAA, wherever such a petition or motion is made. *See Guardian Flight LLC v. Aetna Life Ins. Co.,* No. 3:24-cv-00680-MPS, 2025 U.S. Dist. LEXIS 91676 (D. Conn. May 14, 2025) (concluding that "the NSA creates a private cause of action to enforce IDR awards"); *GPS of New Jersey M.D. P.C. v. Horizon Blue Cross & Blue Shield*, No. cv-22-6614, 2023 U.S. Dist. LEXIS 159460 (D.N.J. Sept. 8, 2023) (confirming the Court's jurisdiction over the NSA awards and confirming the award pursuant to 9 U.S.C. § 9); *see also Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:24-CV-840-TPB-CPT, 2024 U.S. Dist. LEXIS 167943 (M.D. Fla. Sept. 18, 2024) (granting a cross-motion to confirm an NSA award).

Defendant, who has failed to satisfy its obligations under federal law and disregarded every opportunity to seek a vacatur of the Awards, effectively asks this Court to sanction its violation of federal law in the absence of an *exclusive* and *mandatory* alternative confirmation mechanism. Where Congress did not confer exclusive jurisdiction concerning the confirmation of NSA awards upon administrative agencies, Defendant cannot now argue that this Court does not have the authority to confirm the Awards. Defendant's attempt to undermine the NSA through illogical subject matter jurisdiction claims should be rejected and its Motion should be denied.

STATEMENT OF FACTS

On April 14, 2023, Plaintiff provided medical services for an individual identified as M.L. ("Patient M.L.") at William W. Backus Hospital, located in Norwich, Connecticut (Complaint, ¶ 13); and on January 7, 2022, Plaintiff provided medical services for an individual identified as M.P. ("Patient M.P.") at Saint Mary's Hospital, located in Waterbury, Connecticut (Complaint, ¶ 24), (collectively, the "Patients").

At the time of their treatments, the Patients were beneficiaries of health plans issued or administrated by Defendant. Complaint, ¶ 6. After treating Patients, Plaintiff submitted Health Insurance Claim Form ("HCFA") medical bills to Defendant seeking payment for the procedures, itemized under the following Current Procedural Terminology ("CPT") codes:

- As to Patient M.L., Plaintiff billed Defendant $196,000.00 for CPT Code 19364;
- As to Patient M.P., Plaintiff billed Defendant:
  - $9,226.40 for CPT code 35703 LT;
  - $9,226.40 for CPT code 35703 RT;
  - $7,700.00 for CPT code 15002; and
  - $31,752.40 for CPT code 32900.

In response to Plaintiff's HCFAs, Defendant did not allow payment for either patient.

Plaintiff is out-of-network with Defendant and Patients' health plans ordinarily do not include coverage for out-of-network treatments. Complaint, ¶ 7. However, since the services were rendered emergently/inadvertently, Patients' out-of-network medical treatments are subject to reimbursement pursuant to the NSA. Complaint, ¶ 8. The NSA provides that an out-of-network provider reserves the right to dispute a health plan's reimbursement for qualifying out-of-network services and initiate a 30-day negotiation period. Complaint, ¶ 9.

Plaintiff disputed Defendant's payment determinations and initiated the negotiation period called for by the NSA. In effect, Plaintiff was disputing Defendant's payment determinations. Pursuant to the NSA, if the payment dispute between the provider and carrier is not resolved during the negotiation period, the provider has the right to initiate arbitration under which the proper reimbursement amount is determined by a neutral arbitrator. Plaintiff initiated five arbitrations called for by the NSA (*See* **Greenspan Cert.**, **Exhibits A, B, C, D, E**) which were decided by the certified independent dispute resolution entity ("CIDRE") assigned to each arbitration, as follows:

- On March 6, 2024, the CIDRE Federal Hearings and Appeals Service, Inc., ruled in Plaintiff's favor under Arbitration Dispute DISP-878778, awarding Plaintiff a total of $97,500.00 for CPT code 19364. *See* **Exhibit A to Complaint**, attached hereto.

- On December 19, 2024, the CIDRE ProPeer Resources, LLC ("ProPeer"), ruled in Plaintiff's favor under Arbitration Dispute DISP-2001877, awarding Plaintiff a total of $5,535.84 for CPT code 35703 LT. *See* **Exhibit B to Complaint**, attached hereto.

- On December 19, 2024, ProPeer, ruled in Plaintiff's favor under Arbitration Dispute DISP-2001876, awarding Plaintiff a total of $5,535.84 for CPT code 35703 RT. *See* **Exhibit C to Complaint**, attached hereto.

- On December 19, 2024, ProPeer, ruled in Plaintiff's favor under Arbitration Dispute DISP-2001874, awarding Plaintiff a total of $7,700.00 for CPT code 15002. *See* **Exhibit D to Complaint**, attached hereto.

- On December 19, 2024, ProPeer, ruled in Plaintiff's favor under Arbitration Dispute DISP-2001871, awarding Plaintiff a total of $26,296.31 for CPT code 32900. *See* **Exhibit E to Complaint**, attached hereto.

Pursuant to the NSA, if it is determined in arbitration that an additional amount remains due, the carrier has 30 days from the date of the arbitration award to issue the additional payment. 42 U.S.C. § 300gg-111(c)(6). However, Defendant has failed to issue any of the Award payments due to Plaintiff. As of today, more than 300 days have elapsed since the Awards were issued. Accordingly, Plaintiff has been damaged in the amount of $142,567.99 regarding the Awards and continues to suffer damages in the operation of its medical practice.

STANDARD OF REVIEW

"To avoid dismissal under Rule 12(b)(6), the plaintiff must allege enough facts to state a claim to relief that is plausible on its face. . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The Court accepts as true all the complaint's factual allegations when evaluating a motion to dismiss, id., and must draw all reasonable inferences in favor of the non-moving party . . . . However, threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice to survive a motion to dismiss." (citations omitted; internal

quotation marks omitted) *Ware v. Calistro*, No. 24-CV-323 (VDO), 2025 U.S. Dist. LEXIS 156451, at *3 (D. Conn. Aug. 12, 2025).

LEGAL ARGUMENT

POINT I

THE NSA CONTAINS AN IMPLIED PRIVATE RIGHT OF ACTION

Defendant argues that Plaintiff does not have a private right of action under the NSA to confirm or enforce the Awards. This is incorrect. Although the NSA does not specifically include the words, "private right of action," such an expression is not required. The Supreme Court has determined that "magic words explicitly inviting suit" are not necessary, and "[s]tatutory 'shall pay' language" reflects congressional intent "to create both a right and a remedy." *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 323-325, 140 S. Ct. 1308, 1329 (2020).

Additionally, the Supreme Court noted that it had almost "never refused to imply a cause of action where the language of the statute explicitly conferred a right directly on a class of persons." *Cannon v. Univ. of Chi.*, 441 U.S. 677, 690 n.13, 99 S. Ct. 1946, 1954 (1979). The Supreme Court has determined that mandatory "shall" language confers the right to a private action. *See Alexander v. Sandoval*, 532 U.S. 275, 288, 121 S. Ct. 1511, 1521 (2001). In that regard, the NSA clearly states that payment "*shall* be made [by insurers] directly to the nonparticipating provider not later than 30 days after the date on which such determination is made," thereby implying a private cause of action. 42 U.S.C. § 300gg-112(b)(6) (emphasis added).

Congress did show, both through the plain language of the NSA and the legislative intent, that the NSA includes a private right of action because the law mandates payment of the arbitration awards. If federal courts were to rule that there is no judicial enforcement mechanism, the law would be meaningless. *See, e.g., Cheminova A/S v. Griffin L.L.C.*, 182 F. Supp. 2d 68, 73-74 (D.D.C. 2002) (holding that judicial enforcement of an arbitration order issued under the Federal Insecticide,

Fungicide, and Rodenticide Act ("FIFRA") is permitted, reasoning that the statute provides that the decision shall be "final and conclusive" and such language implies that the award is enforceable in court and judicial enforcement is "required to effectuate the statute's express goals.").[1]

The Awards, as generated through the IDR process, are "final and binding" and are only to be disturbed under very limited circumstances. *See EB Safe, LLC v. Hurley*, 832 F. App'x 705, 707 (2d Cir. 2020) ("[A]rbitration awards are subject to very limited review in order to avoid undermining the twin goals of arbitration, namely, settling disputes efficiently and avoiding long and expensive litigation. . . . The Federal Arbitration Act (FAA) creates a 'strong presumption in favor of enforcing arbitration awards,' and courts have an 'extremely limited' role in reviewing such awards."). This might explain why Defendant has not moved to vacate the Awards. Moreover, enforcement of IDR awards is entirely consistent with the purpose of the "legislative scheme" which mandated that the awards are "final and binding." If the Awards cannot be enforced, the legislative scheme is rendered meaningless.

The *Amicus Curiae* brief (the "*Amicus* Brief"), as filed by the United States of America in *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 273 (5th Cir. 2025), is directly in line with the *GPS* and *Guardian Flight v. Aetna* decisions. *See* **Greenspan Cert.**, **Exhibit F**, *Amicus* Brief. The *Amicus* Brief fully supports the position that the NSA indeed contains a private right of action. (*Amicus* Brief, p. 10). The *Amicus* Brief provides appropriate guidance on both the enforceability of an award and the ability for a party to maintain a private right of action to pursue enforcement. ("The text, structure, and historical background of the NSA, which creates in the provider a right to be paid a fixed sum, establish that the NSA confers a right of action to enforce the insurer's statutory obligation to pay.").

[1]More importantly, in *Cheminova*, the defendant argued that FIFRA provided an administrative remedy for failure to comply with an award, and, as such, judicial enforcement of any awards rendered under FIFRA arbitrations was inappropriate. *Cheminova*, 182 F. Supp. 2d at 70. The Court disagreed finding, "nothing in FIFRA indicates that this administrative remedy, registration cancellation, supplants or precludes judicial enforcement." *Id.* at 76.

It cannot be understated that, at no point, does Defendant claim that it does not have a legal duty to pay the IDR Awards, but rather uses a jurisdictional argument to evade a legal liability that is otherwise left effectively unenforceable.

Defendant further argues that the plain text of the NSA, which specifically states that the ability for a party to move to vacate an award, negates the ability for a party to confirm an award. If this were the case, it would lead to a preposterous result. The theory that allows a party to move to vacate an award while the opposing party is precluded from confirming the award, promotes the proposition that one party —who could move to vacate—would be afforded a type of due process that the other party would not. Taking this reasoning to the next level creates an absurd situation where Defendant's motion to vacate is denied, the court would be precluded from confirming the award and Defendant could continue to ignore the award to Plaintiff's detriment.

To accept Defendant's interpretation of the NSA, and that of courts outside this District, effectively allows carriers to avoid payment of IDR awards and obviates the need to vacate awards. In fact, since the enactment of the NSA, there are only a handful of reported decisions that address, in whole or in part, motions to vacate IDR awards. *See Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, Case No: 8:25-cv-167-MSS-NHA, 2025 U.S. Dist. LEXIS 155594 (M.D. Fla. Aug. 12, 2025); *Worldwide Aircraft Services*, , 2024 U.S. Dist. LEXIS 167943, at *1 (M.D. Fla. Sep. 18, 2024); *GPS of N.J. MD, P.C. v. Aetna, Inc.*, Civil Action No.: 22-05487 (ES) (JSA), 2024 U.S. Dist. LEXIS 19434 (D.N.J. Feb. 5, 2024); *GPS,* 2023 WL 5815821. There is simply no impetus to file a motion to vacate when the carriers can simply ignore the awards without repercussion.

Finally, Defendant all but ignores or simply casts aside that the Chief Judge for ***this District*** expressly ruled that the NSA contains an implied private right of action in *Guardian Flight v. Aetna, supra.* In that case, the Court noted the absurdity of allowing one party to potentially vacate an award,

but prohibit the opposing party from pursuing enforcement of an award:

> Providing a private right of action only in cases that fall under the exceptions in § 10(a) of the FAA would also create strange asymmetries: in cases involving fraud, corruption, partiality, and other misconduct, courts could review and vacate IDR awards, or decline to vacate them, in which case they would have the same force as civil judgments. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i); 9 U.S.C. § 10(a). But in all other cases, IDR determinations . . . would be effectively unenforceable. In other words, the awards would be enforceable *only if* they were challenged on one of the narrow grounds in § 10(a) of the FAA, *and then only if* the Court found that the challenge lacked merit. An interpretation of a statute that leads to absurd results is an erroneous interpretation. *See United States v. Granderson*, 511 U.S. 39, 47 n.5, 114 S. Ct. 1259, 127 L. Ed. 2d 611 (1994) (avoiding "plain meaning" interpretation that would "lead[] to an absurd result" (internal quotation marks omitted)); *In re Int'l Admin. Servs.*, 408 F.3d 689, 707-08 (11th Cir. 2005) (eschewing "strict construction" of bankruptcy code to avoid "absurd" results)." *Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-cv-00680-MPS, 2025 LX 84858, at *21-22 (D. Conn. May 14, 2025).

Accordingly, this Court should reject Defendant's ill-reasoned contention that no private right of action exists under the NSA and deny the Motion.

POINT II

THE ARBITRATION AWARDS ISSUED BY THE CERTIFIED IDR ENTITIES ARE ENFORCEABLE UNDER SECTION 9 OF THE FAA

A. Confirmation of Final and Binding IDR Awards is Permitted Under 9 U.S.C. § 9

The NSA expressly provides that an arbitration award issued pursuant to its prescribed IDR proceeding "shall be binding upon the parties involved" and, absent fraud or misrepresentation of facts, shall not be disturbed but for the limited circumstances provided by 9 U.S.C. §10(a)(1-4). *See* 42 U.S.C. § 300gg–111(c)(5)(E)(i). By definition, something that is binding "ha[s] legal force" and "impos[es] an obligation that cannot be disregarded or set aside." *Black's Law Dictionary* (12th ed. 2024); *see also Black's Law Dictionary* (11th ed. 2019) ("having legal force to impose an obligation"). Where there is no exclusive jurisdiction imposed upon an administrative court or entity to confirm or vacate NSA IDR awards, the fact that the awards are legally "binding" carries an implicit judicial enforcement mechanism. Any other interpretation renders both the phrase "shall be binding," a result purposely

imposed by Congress, as well as the IDR awards themselves "meaningless." *See Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 21. Surely, Congress did not intend to create an environment in which patients would be absolved from out-of-network charges while the providers' services were, in effect, rendered for free, allowing healthcare plans to wholly sidestep their legal responsibility as they so choose.

Defendant asserts that none of the cases upon which Plaintiffs rely support the cause of action under 9 U.S.C. § 9. In fact, Chief Judge Shea concluded in *Guardian Flight v. Aetna*, that "no judicial 'confirmation' is required" for an NSA IDR award" to become binding" and, as such, there is "no reason for the NSA to reference § 9 of the FAA." *Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 20. The court further noted that although confirmation of an IDR is not required, federal courts can nonetheless enforce the awards. *Id.* at * 20. The court reasoned that the "text and structure" of the NSA "evinces an intent to allow for judicial enforcement." *Id.* The NSA's "strong, mandatory language . . . regarding payment obligations and the 'binding' effect of IDR awards" can be read to reflect Congressional ***intent*** to 'create both a right and a remedy' for the providers to whom payment is due. *Id.* (quoting *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 324, 140 S. Ct. 1308, 1329 (2020).

Plaintiff's efforts to confirm the Awards under 9 U.S.C. § 9 likewise finds support in the District of New Jersey's decision in *GPS of New Jersey M.D. P.C. v. Horizon Blue Cross & Blue Shield*, No. cv-22-6614, 2023 U.S. Dist. LEXIS 159460 (D.N.J. Sept. 8, 2023), which held that federal courts have jurisdiction to confirm NSA awards pursuant to the FAA. *See GPS,* 2023 US Dist. LEXIS 159460 at *24 (granting Horizon Blue Cross & Blue Shield's cross-motion to confirm an IDR entity award under 9 U.S.C. § 9 because the language of the NSA indicates the IDR award is "final and binding" and, by invoking Section 10(a) of the Federal Arbitration Act, the NSA "gives the court the

authority to confirm the award"); *see also Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:24-CV-840-TPB-CPT, 2024 U.S. Dist. LEXIS 167943 at *2 (M.D. Fla. Sep. 18, 2024) (granting an air ambulance provider's petition to confirm an NSA arbitration award).

In *GPS*, the court granted Horizon's motion to confirm the award under 9 U.S.C. § 9. The court granted Horizon's motion stating:

> ***[U]nless the arbitration award is vacated pursuant to Section 10 or modified or corrected under Section 11 of the FAA, the award "must" be confirmed.*** In interpreting 9 U.S.C. § 9, "language that indicates the award will be final and binding implicitly permits Federal court intervention to compel compliance." *New Jersey Bldg. Laborers' Statewide Ben. Funds v. Newark Bd. of Educ.*, No. 12-cv-7665, 2013 U.S. Dist. LEXIS 131088, at *3 (D.N.J. Sept. 13, 2013) (quoting *Teamsters–Employer Local No. 945 Pension Fund v. Acme Sanitation Corp.*, 963 F. Supp. 340, 347 (D.N.J.1997)). In this case, the Act provides that any determination of the IDR entity is binding on the parties and is only subject to judicial review under the circumstances described in Section 10(a) of the Federal Arbitration Act, 9 U.S.C. § 10. § 300gg-111(c)(5)(E). That language indicates the decision is to be "final and binding," and gives the court the authority to confirm the award.

GPS, 2023 US Dist. LEXIS 159460 at *24 (emphasis added).

In other words, the Court in *GPS* interprets the interplay of the FAA and NSA as one in which 9 U.S.C. § 9 applies and may be utilized to confirm the IDR award "unless the arbitration award is vacated pursuant to Section 10…" Had the Court determined that confirmation was not available under the FAA, it could have denied the cross-motion to vacate and likewise denied the motion to confirm the award. Rather, the court confirmed the award. In that way, *GPS* sanctions the application of 9 U.S.C. § 9 to NSA awards.[2]

If judicial enforcement was unavailable, a party dissatisfied with the result in an IDR proceeding could choose to avoid the need to demonstrate to a court that any of the narrow grounds

[2]While the parties do not have an agreement that a judgment of the court shall be entered upon the arbitration award at issue, the binding arbitration award was issued pursuant to the Federal No Surprises Act. 42 U.S.C. § 300gg–111(c)(5)(E)(i)(I). It is against equity and good conscience to deprive Plaintiff of a remedy to enforce a "final and binding" award issued in accordance with federal law.

specified in 9 U.S.C. § 10(a)(1)-(4) applies by simply ignoring the Awards rather than treating it as a determination that is "binding upon the parties involved." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). As applied here, without judicial enforcement of NSA awards, Defendant can simply choose to ignore its legal obligation to pay – exactly, what Defendant has done here. The Awards were entered more than 300 days ago (some more than 600 days ago), yet Defendant has *chosen* not to pay because it seemingly believes it has the authority to withhold a binding NSA award payment. Where Defendant either participated or had the opportunity to participate in the arbitrations and lost, Defendant's actions should not be countenanced.

Defendant relies on the Fifth Circuit's decision in *Guardian Flight LLC v. Health Care Service Corporation* in support of its position that Plaintiff has no legal basis to petition the court to confirm the Award. 140 F.4th 471 (5th Cir. 2025). Such reliance is misplaced as decisions from the Fifth Circuit are not binding on this Court for the reasons set forth above. *See Anderson v. Recore*, 317 F.3d 194, 201 (2d Cir. 2003) ("We will follow a precedent from this circuit unless a Supreme Court decision or an *en banc* holding of this court implicitly or explicitly overrules the prior decision."); *see also Smith v. Warden*, No. 3:18-cv-1111 (AWT), 2019 U.S. Dist. LEXIS 70740, at *4 (D. Conn. Apr. 26, 2019) ("[L]aw from other circuits is not binding on courts in the Second Circuit."); *Newsweek, Inc. v. U.S. Postal Service*, 663 F.2d 1186, 1196 (2d Cir. 1981) ("It is well settled that the decisions of one Circuit Court of Appeals are not binding upon another Circuit").

As mentioned above, the *Amicus* Brief submitted by the United States in support of the Appellants, argues that (1) Section 9 of the FAA indeed applies as a mechanism to confirming NSA arbitration awards, and (2) the NSA contains within it a private right of action. *See* **Greenspan Cert., Exhibit F.** Indeed, as the United States articulates:

> While Congress did not incorporate the FAA in its entirety into the NSA, the statute's express reliance on the FAA's provisions regarding judicial vacatur of an

> arbitration award in limited circumstances suggest that Congress expected these determinations to be judicially enforceable in all other circumstances. A review of the FAA sections surrounding Section 10(a) underscores this common-sense conclusion. Under the FAA, an arbitration award could be judicially modified in specified circumstances, *see* 9 U.S.C. § 11(a)-(c), or could be judicially vacated for reasons specified in two subsections of 9 U.S.C. § 10: § 10(a) and § 10(c). **If none of these criteria for modification or vacatur are satisfied, a court "must" enter an order confirming the award. 9 U.S.C. § 9;** *see Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 587 (2008) (recognizing that the FAA "unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' exceptions" enumerated in Sections 10 and 11 applies (quoting 9 U.S.C. § 9)). Under the NSA, a CIDRE's payment determination can only be disturbed if it satisfies one of the criteria specified in 9 U.S.C. § 10(a). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). To give meaningful effect to Congress's limitation on the circumstances in which an IDR award can be *disturbed*, it is necessary to recognize that Congress intended parties to be able to seek judicial *enforcement*. *Id*.
>
> If judicial enforcement were unavailable, a party dissatisfied with the result of an IDR proceeding could choose to avoid the need to demonstrate to a court that any of the narrow grounds specified in 9 U.S.C. § 10(a)(1)-(4) applies by simply ignoring the CIDRE' award rather than treating it as a determination that is "binding upon the parties involved," 42 U.S.C. 300gg-111(c)(5)(E)(i)(T). That is not a plausible understanding of Congress' intent.

Amicus Brief, pp. 11-13 (emphasis added).

Notably, Defendant, proceeding on the erroneous assumption that there is no judicial enforcement of NSA awards, has opted to ignore the Awards rather than timely demonstrate to a court that any of the narrow grounds specified in 9 U.S.C. § 10(a)(1)-(4) apply. Surely this blatantly ineffective result was not the intent of Congress when it enacted the NSA. In no way should Defendant be permitted to ignore its legal obligations when the IDR process yields an unfavorable result.

Should the Court grant Defendant's Motion, the IDR Awards would effectively have no legal value, undercutting the NSA's specific processes. Moreover, such a ruling would undermine Congress' intent to make the awards "binding upon the parties involved." 42 U.S.C. §300gg- 111(c)(5)(E)(i)(I). As is rightfully argued in the *Amicus* Brief, the right to recover payment "would mean little if a provider that is not timely paid lacked a judicial remedy to enforce" the award. *Amicus* Brief, p. 10.

A. NSA's Enforcement Provisions are Not Exclusive and are Wholly Inadequate

Defendant argues that "Congress vested HHS with oversight and enforcement authority over the IDR process." *See* Motion, 15. The NSA, however, does not indicate that administrative remedy is exclusive or precludes judicial enforcement. The NSA vests the Department of Labor and the Secretary of Health and Human Services the power to enforce the procedures of the IDR process and provides a mechanism for providers and consumers to submit complaints regarding the process. *See* No Surprises Complaint Form, https://nsa-idr.cms.gov/providercomplaints/s/; **Greenspan Cert., Exhibit G**. While the NSA provides a procedure by which these agencies can be used as a resource for issue resolution in the context of the IDR proceedings, these processes are neither mandatory nor exclusive and do not foreclose a private right of action. Further, while these agencies may *instruct* a carrier to pay an outstanding award, there is no enforcement mechanism in place to ensure such payment, as only the judiciary can.

Defendant argues that *Guardian Flight* did not specifically interpret § 300gg-111, but rather interpreted § 300gg-112, which applies to air ambulances. *See* Motion, pg. 27. However, the similarities between the two statutory sections cannot be ignored—particularly the fact that HHS lacks the ability to enforce IDR awards or adjudicate payment disputes. By way of comparison, if a party to a civil action obtained a judgment, it could move to enforce that judgment by way of collection efforts, whether by execution of a financial institution or by way of a judgment lien. Defendant is effectively arguing that Plaintiff—even after obtaining IDR Awards that Defendant ***has not moved to*** **vacate—** has no right or ability to enforcement of the Awards.

Moreover, "to mandate exhaustion, a statute must contain '[s]weeping and direct' statutory language indicating that there is no federal jurisdiction prior to exhaustion, or the exhaustion requirement is treated as an element of the underlying claim." *Avocado Plus Inc. v. Veneman*, 370 F.3d

1243, 1248 (D.C. Cir. 2004). The NSA does not prescribe a specific enforcement process for payment of the awards after they are issued, much less one that must be exhausted.

The *Amicus* Brief is directly in line with the *GPS* and *Guardian Flight v. Aetna* decisions. The United States supports Plaintiff's position and is consistent with the decision in *GPS* and *Guardian Flight v. Aetna* that Congress indeed intended for the FAA's judicial confirmation authority to apply to NSA awards and that the NSA itself contains a private right of action. "The existence of a specific right in the provider to sue the insurer who fails to fulfill its statutory obligation under the NSA would perhaps be unnecessary if there were adequate alternative means to ensure that insurers pay out-of-network providers the money owed under the statute. ***But no such alternative is apparent***." (emphasis added) *Amicus* Brief, 13.

The issue of administrative agency enforcement was also addressed by the court in *Guardian Flight v. Aetna*. Although it did not conduct an exhaustive analysis, the court noted that "[the] provisions of the NSA do not empower regulatory agencies to enforce individual IDR awards or hold health plans and insurers accountable for untimely payments." *Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 17. Given this reality, Defendant's position that the NSA vests the exclusive appropriate enforcement powers within administrative agencies is an erroneous interpretation that would lead to absurd results. With the tens of thousands of IDR disputes that have been initiated since the enactment of the NSA, any argument that Plaintiff has an administrative remedy to recover unpaid IDR awards is without merit. *See, e.g., Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 21 n. 6 ("I note that it is unlikely that any such enforcement scheme could police insurers' and health plans' compliance with each IDR determination.") (citing *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Directors*, 59 F.4th 1090, 1112 (10th Cir.), *cert. denied sub nom. Argent Tr. Co. v. Harrison*, 144 S. Ct. 280 (2023) ("noting that 'it is unreasonable to assume that the [U.S. Department of Labor]

is capable of policing every employer-sponsored benefit plan in the country" under ERISA's administrative enforcement scheme)).

Defendant argues that the NSA prohibits judicial review for the purpose of confirming an award, while also admitting that the NSA provides for "limited judicial review." *See* Motion, pg. 15. An important distinction must also be drawn between "judicial review" and "judicial enforcement." A petition for confirmation of an NSA award is not a request for judicial review, but rather a request for judicial enforcement. Absent a motion to vacate, a court is not placed in the position to review the substance of the IDR award, but rather to (a) acknowledge the existence of the award, and (b) direct the party owing to pay in full. Otherwise, as discussed herein, there is no meaning left in the intentionally included phrase, "shall be binding."

Any possible administrative review is wholly inadequate, as there is no mechanism for a specific process by which an arbitration award can be enforced. CMS, an agency under HHS, is operating the complaints intake process on behalf of the Departments. Response to a complaint submitted to CMS is due within 60 days, but responses, ***if any***, are received well beyond 60 days. *See* **Greenspan Cert.**, **Exhibit G.** ("The law also directs HHS to establish a process to receive consumer complaints . . .and to respond to such complaints within 60 days."). There is a mere CMS complaint box that may result in a response, if at all.

According to a December 2023 United States Government Accountability Office Report ("GAO Report") titled, "Roll Out of Independent Dispute Resolution Process for Out-of-Network Claims Has Been Challenging":

> **Complaint reviews**. . . .The benefits advisor asks the group health plan to make a payment to a provider or to explain why the plan does not think it owes a payment. When warranted by the evidence, the benefits advisor works with the group health plan to get voluntary compliance, which ***may***, for example, result in a payment to a provider that had not been paid according to the IDR time frames.

See https://www.gao.gov/assets/870/864587.pdf pp. 38-39 (emphasis added).

Further, the GAO Report also states that CMS has "discouraged [providers] from continuing to contact the help desk," and when providers do file complaints "they receive little to no response." *Id.* at 39. Moreover, many providers who initiated IDR arbitration reports claims that "the majority of the payment determinations [they have] won through the IDR process remain unpaid past the 30-day statutory deadline." *Id.* at 32. Another provider stated it had "over $5 million in outstanding IDR payments that remain unpaid past the 30-day deadline." *Id.* Surely this was not the intent of the NSA.[3]

By way of example, in January 2025, CMS issued a report titled "Final Report – Federal Market Conduct Examination of Ambetter of Indiana" ("Examination"). *See* https://www.cms.gov/files/document/ambetter-indiana.pdf; **Greenspan Cert., Exhibit H.** The purpose of the Examination, in part, was to assess the IDR process and subsequent award payments. The entity utilized by CMS to conduct the Examination, considered a sample size of 28 IDR awards issued between January 1, 2022 and December 31, 2023. *Id.* The review revealed 18 of the 28 awards were not paid within the 30 days called for in the NSA. *Id.*, p. 6 (emphasis added). In response to its findings, CCIIO issued the following corrective action plan:

> Issuer is directed to review its policies, procedures, and systems to ensure that final payment amounts due for qualified IDR items or services for which a certified IDR entity has made a payment determination are paid to the nonparticipating provider, facility, or provider of air ambulance services no later than 30 calendar days after such determination. Within 30 calendar days of the date of this final report, provide a copy of any updated policies and/or procedures and/or documentation of system updates to CCIIO.

Id. The Examination report does not suggest any method of enforcement, nor does it recommend the issuance of fines as permitted under the NSA.

Even if the provisions of the NSA provided some meaningful administrative enforcement, these

[3]Additional excerpts of the report include: "If CMS determines that a party is non-compliant with the IDR process regulations, the agency ***could*** require corrective actions or issue a civil monetary penalty against the party . . . ."; "Representatives from the selected initiating parties and stakeholder groups we interviewed expressed concern with the lack of response to submitted complaints." https://www.gao.gov/assets/870/864587.pdf pp. 36-39.

provisions do not preclude a private right of action given the "other aspects of the statute [that] suggest the contrary." *See Alexander v. Sandoval*, 532 U.S. 275, 290, 121 S. Ct. 1511, 1522 (2001) (the suggestion that "Congress intended to preclude" private enforcement by including an express alternative mechanism is only "[s]ometimes" strong enough to overcome other indications); *Oxford Univ. Bank v. Lansuppe Feeder, LLC*, 933 F.3d 99, 106 (2d Cir. 2019) ("suggestion" against implied right of action "can be overcome where … the meaning of the text is clear"). The strength of the indications in the NSA's text suggest that the inadequate mechanisms provided for in the NSA could not "preclude . . . a finding of congressional intent to create a private right of action." *See Sandoval*, 532 U.S. at 290. Moreover, enforcement of IDR awards is entirely consistent with the purpose of the "legislative scheme" which mandated that the awards are "final and binding." If these awards cannot be enforced, the legislative scheme is rendered meaningless. *See Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 21. As the court noted in *Guardian Flight v. Aetna*, "an interpretation of a statute that leads to absurd results is an erroneous interpretation." *Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 22 (emphasis added) (*citing United States v. Granderson*, 511 U.S. 39, 47 n.5, 114 S. Ct. 1259 (1994) (avoiding "plain meaning" interpretation that would "lead[] to an absurd result" (internal quotation marks omitted)); *In re Int'l Admin. Servs.*, 408 F.3d 689, 707-08 (11th Cir. 2005) (eschewing "strict construction" of bankruptcy code to avoid "absurd" results.)). It is respectfully submitted that the Fifth Circuit's interpretation of the NSA "leads to absurd results" and is therefore an "erroneous interpretation." *Id.* Interpretations of a statute which would produce absurd results must be avoided if alternative interpretations consistent with the legislative purpose are available. *See United States v. American Trucking Ass'ns*, 310 U.S. 534, 542, 60 S. Ct. 1059, 1063 (1940) (emphasis added).

Federal courts have long upheld this basic principle of statutory construction: to avoid a statutory interpretation that leads to absurd results. *See, e.g. United States v. Messina*, 806 F.3d 55, 70

(2d Cir. 2015) (rejecting defendant's interpretation of the statute at issue, as it would yield a perverse results); *Guardian Flight v. Aetna*, 2025 U.S. Dist. LEXIS 91676, at * 22.

Absent judicial confirmation (or enforcement) of NSA awards, award recipients are left with an ineffective complaint process with no enforcement authority to mandate payment of IDR awards, thus rendering the NSA futile. The Motion must be denied.

POINT III

ABSENT A TIMELY MOTION TO VACATE, PLAINTIFF'S CROSS-MOTIONS SHOULD BE GRANTED

A. Plaintiff's Cross-Motion to Confirm should be Granted

Pursuant to Section 9 of the FAA, a party to an arbitration may commence a summary action in federal court for confirmation of the award, and "the court ***must*** grant such an order unless the award is vacated, modified, or corrected as prescribed [by the FAA]." 9 U.S.C. § 9 (emphasis added). Where, as here, Defendant has not moved to vacate the Awards, the Awards should be confirmed and a judgment entered. Awards generated through the IDR process are only to be disturbed under very limited circumstances. *See, e.g., GPS,* 2023 U.S. Dist. LEXIS 159460, at * 8 ("[t]he ability of a court to vacate an arbitration award is extremely limited." (quoting *Jones v. PPG Indus., Inc*., 393 F. App'x. 869, 870 (3d Cir. 2010)); *see also D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 110 (2d Cir. 2006) ("A party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high."). This may explain why Defendant has not moved to vacate the IDR Awards.

The record is clear that the Defendant has not filed a motion to vacate any of the Awards as provided for in the NSA. Moreover, it is well established that this Circuit "has repeatedly recognized the strong deference appropriately due arbitral awards and the arbitral process, and has limited its review of arbitration awards in obeisance to that process." *Porzig v. Dresdner, Kleinwort, Benson, N.*

Am. LLC, 497 F.3d 133, 138 (2d Cir. 2007).

Defendant failed to timely file any motions to vacate regarding the Awards and has no substantive basis to request a vacatur from this court, as coverage determinations are not fraud or misstatements of facts, as per the NSA and Section 10(a)(1-4) of the FAA. This Court should not allow Defendant to (a) skirt its responsibility to pay legally binding Awards and (b) seek *de facto* vacatur. Because the CIDRE is afforded great deference and the time within which Defendant could move to vacate the Awards has long since expired, the Awards pursuant to DISP-2001876; DISP-2001876; DISP-2001874; and DISP-2001871 must be confirmed.

The Awards should be confirmed, because the contrary would lead to a wholly inequitable result, effectively sanctioning unlawful behavior. A basic principle of statutory construction is that statutory interpretation that leads to absurd results should be avoided. *See United States v. Messina*, 806 F.3d 55, 70 (2nd Cir. 2015) (holding that the defendant's interpretation of the statute at issue would yield a perverse result); *see also Demarest v. Manspeaker*, 498 U.S. 184, 111 S. Ct. 599 (1991). Interpretations of a statute which would produce absurd results must be avoided if alternative interpretations consistent with the legislative purpose are available. *See United States v. American Trucking Ass'ns*, 310 U.S. 534, 60 S. Ct. 1059 (1940).

Here, there is no debate that (1) awards issued under the NSA are legally binding, (2) Defendant either participated or had the opportunity to participate in the IDR process, (3) the CIDREs selected Plaintiff as the prevailing party, entering the Awards in its favor, and (4) payment of the Awards was due to Plaintiffs over 300 days ago (and counting). Yet, Defendant urges this Court to assist in its attempt to avoid this responsibility altogether, knowing that no effective administrative process can effectuate payment enforcement. In effect, Defendant is communicating that it has the right to pay, not pay, or pay a partial amount of the binding arbitration Awards (at any arbitrary time), all without

judicial intervention or accountability. An NSA award would, therefore, never be final. Such a result would yield an unintended and perverse result.

Moreover, under Defendant's bizarre logic that payment of the Awards is optional, insofar as the courts have no jurisdiction to enforce them, then how can it also be true that the patient is protected from the out-of-network charges at issue? Indeed, if there is no way to enforce payment of the Awards, such that the NSA is effectively unworkable, then a fair reading of that same law would suggest that Defendant's member is fully exposed to the unpaid portion of the balance. Of course, that was not Congress' intent either. The law states that Plaintiff is not permitted to balance bill the patient and must instead avail itself of the NSA's IDR process and procedures to secure payment. If those processes and procedures are unenforceable, can it be said that the balance billing prohibition ***is*** enforceable? The fact that such a question would even arise demonstrates the folly of Defendant's position. The Motion to Confirm must be granted.

B. Plaintiff's Cross-Motion for Summary Judgment should be Granted

"[A] motion for summary judgment may properly be granted . . . only where there is no genuine issue of material fact to be tried, and the facts as to which there is no such issue warrant the entry of judgment for the moving party as a matter of law." (citations omitted) *Rogoz v. City of Hartford*, 796 F.3d 236, 245 (2d Cir. 2015). "The function of the district court in considering the motion for summary judgment is not to resolve disputed questions of fact but only to determine whether, as to any material issue, a genuine factual dispute exists." *Mejia v. Wargo*, No. 3:18-cv-982 (AWT), 2021 U.S. Dist. LEXIS 22128, at *1-2 (D. Conn. Feb. 5, 2021).

It is undisputed that Defendant remains in default of its legal obligation to pay the Awards to this day. Nor is it disputed that the NSA confers an unequivocal legal obligation to pay the Awards. More specifically, the undisputed facts demonstrate that the Awards were entered in Plaintiff's favor

as follows:

- On March 6, 2024, the CIDRE Federal Hearings and Appeals Service, Inc., ruled in Plaintiff's favor under Arbitration Dispute DISP-878778, awarding Plaintiff a total of $97,500.00 for CPT code 19364. *See* **Exhibit A to Complaint**, attached hereto. *See* Rule 56 (a) 1 Statement, ¶ 13.a.

- On December 19, 2024, the CIDRE ProPeer Resources, LLC ("ProPeer"), ruled in Plaintiff's favor under Arbitration Dispute DISP-2001877, awarding Plaintiff a total of $5,535.84 for CPT code 35703 LT. *See* **Exhibit B to Complaint**, attached hereto. *See* Rule 56 (a) 1 Statement, ¶ 13.b.

- On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001876, awarding Plaintiff a total of $5,535.84 for CPT code 35703 RT. *See* **Exhibit C to Complaint**, attached hereto. *See* Rule 56 (a) 1 Statement, ¶ 13.c.

- On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001874, awarding Plaintiff a total of $7,700.00 for CPT code 15002. *See* **Exhibit D to Complaint**, attached hereto. *See* Rule 56 (a) 1 Statement, ¶ 13.d.

- On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001871, awarding Plaintiff a total of $26,296.31 for CPT code 32900. *See* **Exhibit E to Complaint**, attached hereto. *See* Rule 56 (a) 1 Statement, ¶ 13.e.

It is also undisputed that the Awards as described herein have not been paid by Defendant. *See* Rule 56 (a) 1 Statement, ¶ 15. Pursuant to the NSA, if it is determined in arbitration that an additional amount remains due, the carrier has 30 days from the date of the arbitration award to issue the additional payment. 42 U.S.C. § 300gg-111(c)(6). As of the date of this Motion, more than 300 days have elapsed since Defendant's deadline to submit any of the Award payments to Plaintiff. *See* Rule 56 (a) 1 Statement ¶ 16, 17. There is no genuine issue of material fact that Defendant has failed to satisfy its obligations under federal law. As such, Plaintiff is entitled to judgment as a matter of law and the Motion for Summary Judgment must be granted.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court deny Defendant's Motion in its entirety and grant Plaintiff's Cross-Motions to Confirm and for Summary Judgment.

Dated: November 21, 2025
Fair Lawn, New Jersey

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	Civil Action No. 3:25-CV-00498 Hon. Stefan R. Underhill **NOTICE OF MOTION** **MOTION DAY: November 21, 2025**

PLEASE TAKE NOTICE that Plaintiff Richard Agag, MD ("Plaintiff") respectfully moves before the Honorable Stefan R. Underhill, U.S.D.J., in the United States District Court for the District of Connecticut, 915 Lafayette Boulevard, Suite 411, Bridgeport, Conn. 06604, for an order awarding Summary Judgment to Plaintiff as to DISP-878778, DISP-2001877, DISP-2001876, DISP-2001874, and DISP-2001871.

PLEASE TAKE FURTHER NOTICE that in support of the motion, Plaintiff submits a Memorandum of Law, Certification of James Greenspan, Esq. (with exhibits), Affidavit of Richard Agag, MD, a Rule 56 (a) 1 Statement of Undisputed Facts, and a Proposed Order.

Dated: Madison Conn.
November 21, 2025

Clifford A. Merin, Esq.
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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	Civil Action No. 3:25-CV-00498 Hon. Stefan R. Underhill **NOTICE OF MOTION** **MOTION DAY: November 21, 2025**

PLEASE TAKE NOTICE that Plaintiff Richard Agag, MD ("Plaintiff") respectfully moves before the Honorable Stefan R. Underhill, U.S.D.J., in the United States District Court for the District of Connecticut, 915 Lafayette Boulevard, Suite 411, Bridgeport, Conn. 06604, for an order Confirming the Arbitration Awards issued in Arbitration Disputes, DISP-2001877, DISP-2001876, DISP-2001874, and DISP-2001871, pursuant to 9 U.S.C. § 9.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, Plaintiff submits a Memorandum of Law and certification of James Greenspan, Esq., along with exhibits, and a Proposed Order.

Dated: Madison, Conn.
November 21, 2025

Clifford A. Merin, Esq.
MERIN LAW, LLC

By: /s/ Clifford A. Merin, 29863
Clifford A. Merin, Esq.
51 Elm Street, Ste. 409
New Haven, CT 06510
Tel: (475) 321-4101
clifford@merinlaw.com
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, -against- CIGNA HEALTH AND LIFE INSURANCE COMPANY Defendant.	Civil Action No.: 3:25-cv-00498-SRU

AFFIDAVIT OF RICHARD AGAG, MD
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, Richard Agag, MD, of full age and capacity, hereby declare and affirm under penalties of perjury under the laws of the United States that the contents of this Affidavit are true and correct:

1. I am over the age of 18 and understand and believe in the obligations of an oath.

2. I am a medical provider who specializes in plastic and reconstructive surgery.

3. On April 14, 2023, I performed a surgical treatment as part of a procedure for an individual identified as M.L. ("Patient M.L.") at Backus Hospital, located in Norwich, Connecticut. Likewise, on January 7, 2022, I provided medical services for an individual identified as M.P. ("Patient M.P.") at Saint Mary's Hospital, a hospital located in Waterbury, Connecticut.

4. I am an out-of-network provider from Defendant and do not have an in-network contract that would determine or limit payment for my services to Defendant's members.

5. After treating Patient M.L., I caused to have submitted a Health Insurance Claim Form ("HCFA") medical bill to Defendant seeking payment for the procedure, itemized under Current Procedural Terminology ("CPT") code 19364 in the amount of $196,000.00.

6. After treating Patient M.P., I caused to have submitted a Health Insurance Claim Form ("HCFA") medical bill to Defendant seeking payment for the procedure, itemized under CPT codes as follows:

- $9,226.40 for CPT code 35703 LT;
- $9,226.40 for CPT code 35703 RT;
- $7,700.00 for CPT code 15002; and
- $31,752.40 for CPT code 32900.

7. Defendant did not allow payment for any of the CPT codes for either Patient.

8. On March 6, 2024, the certified independent dispute resolution entity ("CIDRE") Federal Hearings and Appeals Service, Inc., assigned to DISP-878778 for Patient M.L. ruled in my favor awarding $97,500.00 for CPT code 19364. *See* **Exhibit A to Complaint**, attached hereto.

9. On December 19, 2024, the CIDRE ProPeer Resources, LLC ("ProPeer") assigned to DISP-2001877 for Patient M.P. ruled in my favor awarding a total of $5,535.84 for CPT code 35703 LT. *See* **Exhibit B to Complaint**, attached hereto.

10. On December 19, 2024, ProPeer, the CIDRE assigned to DISP-201876 for Patient M.P. ruled in my favor awarding $5,535.84 for CPT code 35703 RT. *See* **Exhibit C to Complaint**, attached hereto.

11. On December 19, 2024, ProPeer, the CIDRE assigned to DISP-2001874 for Patient M.P., ruled in my favor awarding $7,700.00 for CPT code 15002. *See* **Exhibit D to Complaint**, attached hereto.

12. On December 19, 2024, ProPeer, the CIDRE assigned to DISP-2001871 for Patient M.P., awarding $26,296.31 for CPT code 32900. *See* **Exhibit E to Complaint**, attached hereto.

13. As of the date of this Affidavit, I have still not received any payment from Defendant as to the Awards as described in Paragraphs 8-12 of this Affidavit.

RICHARD AGAG, MD

Richard Agag, MD

Date: November 20, 2025

Via Remote Notarization
4:13 p.m.
Clifford A. Nagelberg
Commissioner of the Superior Court

EXHIBIT A TO COMPLAINT -
CIDRE, FEDERAL HEARINGS AND APPEALS SERVICES, INC.'S RULING,
DISP-878778, DATED MARCH 6, 2024
(REPRODUCED HEREIN AT PP. JA-19 – JA-23)

EXHIBIT B TO COMPLAINT -
CIDRE, PROPEER RESOURCES, LLC'S RULING,
DISP-2001877, DATED DECEMBER 19, 2024
(REPRODUCED HEREIN AT PP. JA-24 – JA-26)

EXHIBIT C TO COMPLAINT -
CIDRE, PROPEER RESOURCES, LLC'S RULING,
DISP-2001876, DATED DECEMBER 19, 2024
(REPRODUCED HEREIN AT PP. JA-27 – JA-29)

EXHIBIT D TO COMPLAINT -
CIDRE, PROPEER RESOURCES, LLC'S RULING,
DISP-2001874, DATED DECEMBER 19, 2024
(REPRODUCED HEREIN AT PP. JA-30 – JA-32)

EXHIBIT E TO COMPLAINT -
CIDRE, PROPEER RESOURCES, LLC'S RULING,
DISP-2001871, DATED DECEMBER 19, 2024
(REPRODUCED HEREIN AT PP. JA-33 – JA-35)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	Civil Action No. 3:25-CV-00498-SRU

James Greenspan, of full age, being duly sworn according to law, upon his oath hereby deposes and says:

1. I am co-owner of the law firm, Gottlieb & Greenspan, LLC and I have an appearance in the above captioned matter, along with my co-counsel Clifford A. Merin of Merin Law, LLC.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Notice of IDR Initiation for DISP-878778.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Notice of IDR Initiation for DISP-2001877.

4. Attached hereto as **Exhibit C** is a true and correct copy of the Notice of IDR Initiation for DISP-2001876.

5. Attached hereto as **Exhibit D** is a true and correct copy of the Notice of IDR Initiation for DISP-2001874.

6. Attached hereto as **Exhibit E** is a true and correct copy of the Notice of IDR Initiation for DISP-2001871.

7. Attached hereto as **Exhibit F** is a true and correct copy of the United States' *amicus curiae* brief in support of the appellants in *Guardian Flight LLC v. Health Care Serv. Corp.*, Case No. 24-10561(5th Cir.).

8. Attached hereto as **Exhibit G** is a true and correct copy of the first page of the No Surprises Complaint Form, which also can be found at https://nsa-idr.cms.gov/providercomplaints/s/.

9. Attached hereto as **Exhibit H** is a true and correct copy of the Final Report – Federal Market Conduct Examination of Ambetter of Indiana," which also can be found at https://www.cms.gov/files/document/ambetter-indiana.pdf.

Dated: November 21, 2025
Fair Lawn, NJ

James Greenspan, Esq.
17-17 Route 208, Suite 250
Fair Lawn, NJ 07410
201.644.0894
jgreenspan@gottliebandgreenspan.com

Signed & Sworn Before Me,
Via Remote Notarization
1:09 p.m. -
11/24/2025
Clifford A. Mercer
Commissioner of the Superior Court

Notice of IDR Initiation

OMB Control Number: 1210-0169 Expiration Date: 06/30/2025

Dispute Reference Number: DISP-878778

Qualification Questions

Was the service in question provided prior to 1/1/2022?

No

I'm a(n):

Health care provider

Tax ID:

1206

National Provider Identifier (NPI):

N/A

Health Plan Type:

Either partially or fully self-insured private (employment-based) group health plan

ERISA Plan self insured

Yes

When did the open negotiation period start?

11/13/2023

Proof of Open Negotiation Documentation:

POD 11-13-23.pdf

nsa dispute ltr.pdf

Did the health care provider, health care facility, or provider of air ambulance services get consent from the participant, beneficiary, or enrollee to waive surprise billing protections for these items or services?

No

What are you disputing today?

Single dispute

Health Care Provider, Health Care Facility, or Provider of Air Ambulance Services Information or TPA

Name:

Richard Agag

Hospital, Facility or Group Name:

Backus Hospital

Mailing Address:

456 Washington St, 8E

City:

New York

State:

NY

Zip Code:

10021

Email:

arbs@gottliebandgreenspan.com

Phone:

(201) 819-4056

Fax:

(201) 465-3033

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email: **Phone:**

Secondary point-of-contact

Name:

Mailing Address:

City: **State:** **Zip Code:**

Email: **Phone:**

Name:
Cigna

Mailing Address:
PO Box 182223

City: **State:** **Zip Code:**
Chattanooga TN 37422

Email: **Phone:** **Fax:**
nsa@cigna.com (800) 244-6224

Primary Point-of-contact

Name:

Mailing Address:

City: **State:** **Zip Code:**

Email: **Phone:**

Secondary point-of-contact

Name:

Mailing Address:

City: **State:** **Zip Code:**

Email: **Phone:**

Line Item

Breast reconstruction; with free flap (eg, fTRAM, DIEP, SIEA, GAP flap)

Claim Number:
4682328298918

Date of the qualified IDR item or service:
04/14/2023

Qualifying Payment Amount (QPA):
$0.00

Qualifying Payment Amount documentation:
HCFA.pdf
EOB.pdf

Cost sharing amount allowed:
$0.00

Initial payment amount for the item(s) and/or service(s):
N/A

Type of Qualified Item(s) or Service(s):

Hospital-based service(s)

Service Code:

19364

Place of Service Code:

22

Location of Service:

CT

Certified IDR entity legal business name:

Federal Hearings and Appeals Services, LLC

Third Party Attestation:

Yes

Conflict of Interest Attestation

☑ I, the undersigned initiating party (or representative of the initiating party), attest that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Signature: James Greenspan, Esq.

Date: 12/29/2023

EXHIBIT B TO GREENSPAN CERT.

Notice of IDR Initiation

OMB Control Number: 1210-0169 Expiration Date: 06/30/2025

Dispute Reference Number: DISP-2001877

Qualification Questions

Was the service in question provided prior to 1/1/2022?

No

I'm a(n):

Health care provider

Tax ID:

1206

National Provider Identifier (NPI):

N/A

Health Plan Type:

Either partially or fully self-insured private (employment-based) group health plan

ERISA Plan self insured

Yes

When did the open negotiation period start?

09/16/2024

Proof of Open Negotiation Documentation:

POD 9-16-2024.pdf

NSA DISPUTE LTR.pdf

Did the health care provider, health care facility, or provider of air ambulance services get consent from the participant, beneficiary, or enrollee to waive surprise billing protections for these items or services?

No

What are you disputing today?

Single dispute

Health Care Provider, Health Care Facility, or Provider of Air Ambulance Services Information or TPA

Name:
Richard Agag

Hospital, Facility or Group Name:
St Mary's Hospital

Mailing Address:
456 Washington St, 8E

City:
New York

State:
NY

Zip Code:
10021

Email:
arbs@gottliebandgreenspan.com

Phone:
(201) 819-4056

Fax:
(201) 465-3033

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Name:
CIGNA

Mailing Address:
P.O. BOX 188061

City:
Chattanooga

State:
TN

Zip Code:
37422

Email:
nsa@cigna.com

Phone:
(800) 244-6224

Fax:

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Line Item

Exploration not followed by surgical repair, artery; lower extremity (eg, common femoral, deep femoral, superficial femoral, popliteal, tibial, peroneal)

Claim Number:
4682422201002

Date of the qualified IDR item or service:
01/07/2022

Qualifying Payment Amount (QPA):
$0.00

Qualifying Payment Amount documentation:
DISPUTE EOB.pdf

Cost sharing amount allowed:
$0.00

Initial payment amount for the item(s) and/or service(s):
N/A

Type of Qualified Item(s) or Service(s):
Professional service(s)

Service Code:
35703

Place of Service Code:
21

Location of Service:
CT

Additional Supporting Documentation:

Certified IDR entity legal business name:
ProPeer Resources, LLC

Third Party Attestation:
Yes

Conflict of Interest Attestation

☑ I, the undersigned initiating party (or representative of the initiating party), attest that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Signature:
JAMES GREENSPAN, ESQ

Date:
10/30/2024

EXHIBIT C TO GREENSPAN CERT.

Notice of IDR Initiation

OMB Control Number: 1210-0169 Expiration Date: 06/30/2025

Dispute Reference Number: DISP-2001876

Qualification Questions

Was the service in question provided prior to 1/1/2022?

No

I'm a(n):

Health care provider

Tax ID:

1206

National Provider Identifier (NPI):

N/A

Health Plan Type:

Either partially or fully self-insured private (employment-based) group health plan

ERISA Plan self insured

Yes

When did the open negotiation period start?

09/16/2024

Proof of Open Negotiation Documentation:

NSA DISPUTE LTR.pdf

POD 9-16-2024.pdf

Did the health care provider, health care facility, or provider of air ambulance services get consent from the participant, beneficiary, or enrollee to waive surprise billing protections for these items or services?

No

What are you disputing today?

Single dispute

Health Care Provider, Health Care Facility, or Provider of Air Ambulance Services Information or TPA

Name:
Richard Agag

Hospital, Facility or Group Name:
St Mary's Hospital

Mailing Address:
456 Washington St, 8E

City:
New York

State:
NY

Zip Code:
10021

Email:
arbs@gottliebandgreenspan.com

Phone:
(201) 819-4056

Fax:
(201) 465-3033

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Name:
CIGNA

Mailing Address:
P.O. BOX 188061

City:
Chattanooga

State:
TN

Zip Code:
37422

Email:
nsa@cigna.com

Phone:
(800) 244-6224

Fax:

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Line Item

Exploration not followed by surgical repair, artery; lower extremity (eg, common femoral, deep femoral, superficial femoral, popliteal, tibial, peroneal

Claim Number:
4682422201002

Date of the qualified IDR item or service:
01/07/2022

Qualifying Payment Amount (QPA):
$0.00

Qualifying Payment Amount documentation:
DISPUTE EOB.pdf

Cost sharing amount allowed:
$0.00

Initial payment amount for the item(s) and/or service(s):
N/A

Type of Qualified Item(s) or Service(s):
Professional service(s)

Service Code:
35703

Place of Service Code:
21

Location of Service:
CT

Additional Supporting Documentation:

Certified IDR entity legal business name:
ProPeer Resources, LLC

Third Party Attestation:
Yes

Conflict of Interest Attestation

☑ I, the undersigned initiating party (or representative of the initiating party), attest that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Signature:
JAMES GREENSPAN, ESQ

Date:
10/30/2024

EXHIBIT D TO GREENSPAN CERT.

Notice of IDR Initiation

OMB Control Number: 1210-0169 Expiration Date: 06/30/2025

Dispute Reference Number: DISP-2001874

Qualification Questions

Was the service in question provided prior to 1/1/2022?

No

I'm a(n):

Health care provider

Tax ID:

1206

National Provider Identifier (NPI):

N/A

Health Plan Type:

Either partially or fully self-insured private (employment-based) group health plan

ERISA Plan self insured

Yes

When did the open negotiation period start?

09/16/2024

Proof of Open Negotiation Documentation:

NSA DISPUTE LTR.pdf

POD 9-16-2024.pdf

Did the health care provider, health care facility, or provider of air ambulance services get consent from the participant, beneficiary, or enrollee to waive surprise billing protections for these items or services?

No

What are you disputing today?

Single dispute

Health Care Provider, Health Care Facility, or Provider of Air Ambulance Services Information or TPA

Name:
Richard Agag

Hospital, Facility or Group Name:
St Mary's Hospital

Mailing Address:
456 Washington St, 8E

City:
New York

State:
NY

Zip Code:
10021

Email:
arbs@gottliebandgreenspan.com

Phone:
(201) 819-4056

Fax:
(201) 465-3033

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Name:
CIGNA

Mailing Address:
P.O. BOX 188061

City:
Chattanooga

State:
TN

Zip Code:
37422

Email:
nsa@cigna.com

Phone:
(800) 244-6224

Fax:

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Line Item

Surgical preparation or creation of recipient site by excision of open wounds, burn eschar, or scar (including subcutaneous tissues), or incisional release of scar contracture, trunk, arms, legs; first 100 sq cm or 1% of body area of infants and children

Claim Number:
4682422201002

Date of the qualified IDR item or service:
01/07/2022

Qualifying Payment Amount (QPA):
$0.00

Qualifying Payment Amount documentation:
DISPUTE EOB.pdf

Cost sharing amount allowed:
$0.00

Initial payment amount for the item(s) and/or service(s):
N/A

Type of Qualified Item(s) or Service(s):
Professional service(s)

Service Code:
15002

Place of Service Code:
21

Location of Service:
CT

Additional Supporting Documentation:

Certified IDR entity legal business name:
ProPeer Resources, LLC

Third Party Attestation:
Yes

Conflict of Interest Attestation

☑ I, the undersigned initiating party (or representative of the initiating party), attest that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Signature:
JAMES GREENSPAN, ESQ

Date:
10/30/2024

Notice of IDR Initiation

OMB Control Number: 1210-0169 Expiration Date: 06/30/2025

Dispute Reference Number: DISP-2001871

Qualification Questions

Was the service in question provided prior to 1/1/2022?

No

I'm a(n):

Health care provider

Tax ID:

1206

National Provider Identifier (NPI):

N/A

Health Plan Type:

Either partially or fully self-insured private (employment-based) group health plan

ERISA Plan self insured

Yes

When did the open negotiation period start?

09/16/2024

Proof of Open Negotiation Documentation:

NSA DISPUTE LTR.pdf

POD 9-16-2024.pdf

Did the health care provider, health care facility, or provider of air ambulance services get consent from the participant, beneficiary, or enrollee to waive surprise billing protections for these items or services?

No

What are you disputing today?

Single dispute

Health Care Provider, Health Care Facility, or Provider of Air Ambulance Services Information or TPA

Name:
Richard Agag

Hospital, Facility or Group Name:
St Mary's Hospital

Mailing Address:
456 Washington St, 8E

City:
New York

State:
NY

Zip Code:
10021

Email:
arbs@gottliebandgreenspan.com

Phone:
(201) 819-4056

Fax:
(201) 465-3033

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Name:
CIGNA

Mailing Address:
P.O. BOX 188061

City:
Chattanooga

State:
TN

Zip Code:
37422

Email:
nsa@cigna.com

Phone:
(800) 244-6224

Fax:

Primary Point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Secondary point-of-contact

Name:

Mailing Address:

City:

State:

Zip Code:

Email:

Phone:

Line Item

Resection of ribs, extrapleural, all stages

Claim Number:
4682422201002

Date of the qualified IDR item or service:
01/07/2022

Qualifying Payment Amount (QPA):
$0.00

Qualifying Payment Amount documentation:
DISPUTE EOB.pdf

Cost sharing amount allowed:
$0.00

Initial payment amount for the item(s) and/or service(s):
N/A

Type of Qualified Item(s) or Service(s):
Professional service(s)

Service Code:
32900

Place of Service Code:
21

Location of Service:
CT

Additional Supporting Documentation:

Certified IDR entity legal business name:
ProPeer Resources, LLC

Third Party Attestation:
Yes

Conflict of Interest Attestation

☑ I, the undersigned initiating party (or representative of the initiating party), attest that to the best of my knowledge the preferred certified IDR entity does not have a disqualifying conflict of interest and that the item(s) and/or service(s) at issue are qualified item(s) and/or service(s) within the scope of the Federal IDR process.

Signature:
JAMES GREENSPAN, ESQ

Date:
10/30/2024

EXHIBIT F TO GREENSPAN CERT.

No. 24-10561

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

GUARDIAN FLIGHT, L.L.C.; MED-TRANS CORPORATION,

Plaintiffs-Appellants,

v.

HEALTH CARE SERVICE CORPORATION,

Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Texas

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS

SEEMA NANDA
Solicitor of Labor

WAYNE R. BERRY
Associate Solicitor for Plan Benefits Security

JEFFREY M. HAHN
Counsel for Appellate and Special Litigation

ISIDRO MARISCAL
Trial Attorney
U.S. Department of Labor
Office of the Solicitor
Plan Benefits Security Division
200 Constitution Avenue NW, N4611
Washington, DC 20210
(202) 693-5600

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

JOSHUA M. SALZMAN
KEVIN B. SOTER
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Washington, DC 20530
(202) 305-1754

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INTRODUCTION AND INTEREST OF THE UNITED STATES

The No Surprises Act (NSA) protects patients from potentially ruinous surprise medical bills.[1] To that end, the NSA created a mechanism—the independent dispute resolution (IDR) process—for resolving payment disputes between medical providers and insurers and for ensuring that providers receive fair compensation for their services. The IDR process is integral to the NSA. When the parties cannot agree on appropriate compensation, the IDR process culminates in a payment determination reached through binding arbitration. Yet, the district court held that a party to the IDR process cannot enforce an IDR award. If there were no private means to enforce IDR awards, one of the statute's core features would be frustrated, upending Congress's scheme.

The U.S. Departments of Health and Human Services (HHS), Labor, and the Treasury are jointly charged with implementing the NSA and the United States accordingly has a strong interest in the stability and sustainability of the IDR process. The Department of Labor also has a strong interest in enforcing the provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to ensure fair and impartial plan administration and compliance by ERISA-governed health plans with ERISA's requirements and purposes. 29

[1] This brief uses the term "insurers" or "plans" to refer to "group health plans" and "health insurance issuers." *See* 42 U.S.C. § 300gg-111(a)(1).

U.S.C. §§ 1132, 1135. The NSA added surprise-billing provisions to ERISA, and ERISA-plan terms must be implemented in accordance with ERISA's substantive standards, including those stemming from these provisions and the Department of Labor's implementing regulation. *Id.* §§ 1185e, 1185f; 29 C.F.R. pt. 2590, subpart D. ERISA participants, beneficiaries, and assignees are entitled to "ready access to the Federal courts." 29 U.S.C. § 1001(b).

STATEMENT OF THE ISSUES

1. Whether a party to an IDR proceeding can judicially enforce the arbitrator's payment determination; and

2. Whether plaintiffs, who were assigned benefits by patients participating in ERISA-governed health plans, have standing to assert a claim for wrongful denial of benefits under ERISA for failing to pay benefits in accordance with an IDR determination.[2]

STATEMENT OF THE CASE

A. Statutory Background

1. Medical services are not provided under uniform pricing models, and the amount a provider will charge for care to a given patient often depends on whether the patient has health insurance and, if so, whether the provider has

[2] The government expresses no view on plaintiffs' unjust enrichment claim.

entered into a contract with the patient's health plan agreeing to provide services to the plan's members at particular pre-negotiated rates.

Most health plans have a network of providers who have contractually agreed to accept pre-negotiated payment amounts for specific items or services. *See Requirements Related to Surprise Billing; Part I*, 86 Fed. Reg. 36,872, 36,874 (July 13, 2021). Plans encourage their members to receive care from these "in-network" providers, and when they do so, the patients' financial obligations are limited by the terms of their health plans. When, however, a patient receives care from an out-of-network provider, the patient's health plan may decline to pay the provider or may pay an amount lower than the provider's billed charges. In that circumstance, the patient is responsible for the balance of the bill, and because the rate charged was not pre-negotiated by the patient's health plan, it may cost immensely more than the item or service would have cost had the rate been pre-negotiated.

"A balance bill may come as a surprise for the individual." 86 Fed. Reg. at 36,874. Surprise billing may occur when a patient receives care from a provider whom the patient could not have chosen in advance, or whom the patient did not have reason to believe would be outside the network. For example, a patient in an emergency situation will often be unable to choose which emergency department she goes to or whether to receive care from an in-

network provider even if the emergency department happens to be in-network. *Id.* This situation arises frequently in connection with air ambulance providers, as individuals generally do not have the ability to select an air ambulance provider and consequently have little control over whether the provider is in-network. *See id.*

Under these circumstances, a patient with health insurance could receive a surprise medical bill. *See* 86 Fed. Reg. at 36,874. As Congress recognized, "[t]hese unexpected medical bills can result in financial ruin." H.R. Rep. No. 116-615, pt. 1, at 52 (2020).

2. Congress enacted the NSA to combat the crisis of surprise medical bills. Pub. L. No. 116-260, div. BB, tit. I, 134 Stat. 1182, 2757-2890 (2020). The NSA made parallel amendments to three statutes: the Public Health Service Act (PHSA), *see* 42 U.S.C. § 300gg-111 *et seq.*; Part 7 of ERISA, which establishes requirements for group health plans, *i.e.*, employer-sponsored plans that provide medical benefits to employees and their dependents, *see* 29 U.S.C. §§ 1185e, 1185f; and the Internal Revenue Code.[3]

The NSA protects insured patients from unexpected liabilities by prohibiting balance billing by certain types of providers. 42 U.S.C. §§ 300gg-131,

[3] Unless otherwise noted, this brief cites to the NSA's amendments to the PHSA.

132, 135. When applicable, the NSA caps a patient's share of liability to an out-of-network provider at an amount comparable to what the individual would have owed had she received care from an in-network provider. *See id.* §§ 300gg-111(a)(1)(C)(ii)-(iii), (3)(H)(ii), (b)(1)(A)-(B), 300gg-112(a)(1)-(2).

In turn, the NSA also creates a process that allows the provider and insurer to determine an out-of-network rate in the absence of an in-network contract. 42 U.S.C. §§ 300gg-111, 300gg-112. Under these provisions, insurers are required to cover specified services furnished by non-participating providers, and "shall pay" those providers the difference between the participant's cost-sharing obligation and the "out-of-network rate" for the service. *Id.* § 300gg-111(a)(1)(C)(iv)(II), (b)(1)(D); *id.* § 300gg-112(a)(3); *see id.* § 300gg-111(a)(3)(K) (defining "out-of-network rate").

If the insurer and provider are not able to agree on a payment amount, either may initiate the IDR process. 42 U.S.C. §§ 300gg-111(c)(1)(B), 300gg-112(b)(1)(B). The IDR process involves "baseball-style" arbitration, whereby the decisionmaker (referred to as a "certified IDR entity" or "CIDRE") selects one of the parties' proposed payment amounts. *Id.* § 300gg-111(c); *see also* H.R. Rep. No. 116-615, pt. 1, at 56-57 (describing "the IDR process, also referred to as arbitration"). The CIDRE's determination "shall be binding upon the parties involved," 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I), and "shall not be subject to

judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9," a section of the Federal Arbitration Act, *id.* § 300gg-111(c)(5)(E)(i)(II). *See also id.* § 300gg-112(b)(5)(D) (incorporating these provisions with respect to air ambulance IDR determinations). The insurer's share of the payment "shall be made directly to the nonparticipating provider or facility not later than 30 days after the date on which such determination is made." *Id.* §§ 300gg-111(c)(6), 300gg-112(b)(6).

B. Factual and Procedural Background

Plaintiffs are air ambulance providers that engaged in the IDR process with defendant Health Care Service Corporation (HCSC), an insurance company. ROA.103-104; Compl. at 1. Plaintiffs allege they obtained IDR determinations that HCSC has refused to pay. Compl. at 4-5, Ex. A. The district court held, as relevant here, that the NSA does not contain an express or implied cause of action to enforce an IDR determination and that plaintiffs lacked standing to pursue their ERISA claim. ROA.106-112.

SUMMARY OF ARGUMENT

I. The IDR process would make little sense if the parties to a CIDRE's payment determination lacked a means for judicial enforcement. The NSA's text, structure, purpose, and history support judicial enforcement of the payment determinations. Congress also modeled this statute's dispute resolution process

on binding arbitration between private parties—a proceeding where a central principle is that a party may judicially enforce the award. No adequate alternative means for enforcing an IDR award is apparent.

II. The district court also erred in concluding that plaintiffs lacked standing to assert claims for wrongful denial of benefits under ERISA section 502(a)(1)(B). The surprise-billing provisions added to ERISA by the NSA directly modify the benefits provided by ERISA-governed health plans by requiring that they cover out-of-network air ambulance services if covered in-network, and that they pay the providers of those services in accordance with IDR determinations. Because the NSA's payment requirements are tantamount to mandatory plan benefits, refusal to pay benefits in accordance with IDR determinations is a wrongful denial of plan benefits that imparts an injury-in-fact on plan participants, and, by extension, on plaintiffs suing based on assignments of benefits. In any event, and apart from any injury to participants, plaintiffs have also suffered an injury in their own right sufficient for Article III standing based on defendant's failure to make the statutorily required payments.

ARGUMENT

I. The district court erred in holding that IDR awards under the NSA are not judicially enforceable.

The IDR provisions of the NSA would make little sense if there were no mechanism for the parties to an IDR proceeding to enforce a CIDRE's payment

determination. The NSA combats ruinous surprise medical bills by capping a patient's financial obligations for certain covered services at an amount similar to what the patient would have paid to an in-network provider. When Congress extinguished the provider's right to seek full compensation from the patient, it created a new statutory right to compensation from the patient's insurer through a new statutory procedure. *See* H.R. Rep. No. 116-615, pt. 1, at 56 ("A key element of any solution to address surprise billing comprehensively is the payment rate, which is the amount that payers must remit to providers for out-of-network items and services"). The amount of compensation is determined through a rate established by state law (if applicable), negotiation between the out-of-network provider and the patient's insurer, or, if necessary, binding IDR arbitration.

Specifically, Congress established an "out-of-network rate" defined as, in cases that proceed to an IDR determination, the rate selected by the CIDRE. 42 U.S.C. § 300gg-111(a)(3)(K)(ii)(II). Because the provider is now prohibited from balance billing patients, the provider's right to be promptly paid by the insurer based on the amount awarded by the CIDRE is a core feature of the statute's design. And in the provisions that are key to this appeal, Congress specified that a provider is owed a specific amount (as determined by the CIDRE's "binding" award), from a specific source (the insurer who participated in the IDR

proceeding), by a specific deadline (within 30 days). *See* 42 U.S.C. §§ 300gg-111(a)(1)(C)(iv)(II), (b)(1)(D), (c)(5)(E)(i)(I), (c)(6), 300gg-112(a)(3)(B), (b)(6).

The district court held that IDR awards are not privately enforceable. But the district court read the statute too narrowly and placed undue weight on the absence of a specific statutory provision authorizing a provider to seek federal judicial enforcement of a CIDRE's award. With respect to whether the NSA itself establishes a private right of action, the text, structure, purpose, and history of the statute contain substantial "'affirmative' evidence of intent to allow private civil suits." *Stokes v. Southwest Airlines*, 887 F.3d 199, 202 (5th Cir. 2018) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 293 n.8 (2001)). Whether viewed as a private right of action under the NSA or a cause of action inherent in federal courts' equitable authority in these circumstances, plaintiffs' claim may proceed.

A. Congress made clear that it intended for IDR awards to be judicially enforceable. The awards "shall be binding upon the parties involved" (except in enumerated circumstances not at issue here). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). The insurer "shall cover" the services, including by making "payment directly to" the provider when a payment amount is determined through IDR. *Id.* § 300gg-111(a)(1)(C)(iv)(II); *see also id.* § 300gg-111(b)(1)(D), § 300gg-112(a)(3)(B). And that direct payment from the insurer to the provider "shall be made . . . not later than 30 days after" the CIDRE renders its decision,

id. §§ 300gg-111(c)(6), 300gg-112(b)(6); 29 U.S.C. §1185f(b)(6). This language creates a "right" in the provider to recover the amount of the CIDRE's award. *See Sandoval*, 532 U.S. at 288 (stressing the importance of "rights-creating language" in determining whether a statute establishes a cause of action (quotation marks omitted)). That "right" would mean little if a provider that is not timely paid lacked a judicial remedy to enforce the CIDRE's award. And, unlike an action seeking monetary damages of an open-ended amount, plaintiffs seek to recover a fixed amount that is specified by the NSA's congressionally mandated dispute-resolution procedure and under a statutory directive that payment "shall be made directly to the nonparticipating provider or facility not later than 30 days after the date on which such determination is made." 42 U.S.C. §§ 300gg-111(c)(6), 300gg-112(b)(6); 29 U.S.C. § 1185f(b)(6). These statutory features distinguish this case from circumstances where courts have declined to recognize implied rights of action.

The text, structure, and historical background of the NSA, which creates in the provider a right to be paid a fixed sum, establish that the NSA confers a right of action to enforce the insurer's statutory obligation to pay. Indeed, the Supreme Court in *Key Tronic Corp. v. United States*, 511 U.S. 809, 818 n.11 (1994), accepted the proposition that "'to say that A shall be liable to B is

the *express* creation of a right of action.'" *Id.* at 818 n.11 (quoting *id.* at 822 (Scalia, J., dissenting)).

The conclusion that IDR awards are judicially enforceable is reinforced by the fact that the IDR process is modeled in significant part on binding arbitration between private parties—a cornerstone of which is that the arbitrator's award is judicially enforceable. As in a binding arbitration, IDR proceedings involve multiple "parties" (here, a provider and an insurer) appearing before a neutral adjudicator who possesses the qualifications necessary to resolve the dispute (here, the CIDRE). As in a binding arbitration, Congress specified that the adjudicator's determination "shall be binding upon the parties involved," except in specified circumstances involving fraud and the like. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). And as in a binding arbitration subject to the Federal Arbitration Act (FAA), the merits of the adjudicator's determination "shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9," a part of the FAA addressing limited circumstances in which awards can be vacated. *Id.* § 300gg-111(c)(5)(E)(i)(II).

While Congress did not incorporate the FAA in its entirety into the NSA, the statute's express reliance on the FAA's provisions regarding judicial vacatur of an arbitration award in limited circumstances suggests that Congress expected

these determinations to be judicially enforceable in all other circumstances. A review of the FAA sections surrounding Section 10(a) underscores this common-sense conclusion. Under the FAA, an arbitration award could be judicially modified in specified circumstances, *see* 9 U.S.C. § 11(a)-(c), or could be judicially vacated for reasons specified in two subsections of 9 U.S.C. § 10: § 10(a) and § 10(c). If none of these criteria for modification or vacatur are satisfied, a court "must" enter an order confirming the award. 9 U.S.C. § 9; *see Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 587 (2008) (recognizing that the FAA "unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' exceptions" enumerated in Sections 10 and 11 applies (quoting 9 U.S.C. § 9)). Under the NSA, a CIDRE's payment determination can only be disturbed if it satisfies one of the criteria specified in 9 U.S.C. § 10(a). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). To give meaningful effect to Congress's limitation on the circumstances in which an IDR award can be *disturbed*, it is necessary to recognize that Congress intended parties to be able to seek judicial *enforcement*.

If judicial enforcement were unavailable, a party dissatisfied with the result of an IDR proceeding could choose to avoid the need to demonstrate to a court that any of the narrow grounds specified in 9 U.S.C. § 10(a)(1)-(4) applies by simply ignoring the CIDRE's award rather than treating it as a determination

that is "binding upon the parties involved," 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I). That is not a plausible understanding of Congress's intent.

The existence of a specific right in the provider to sue the insurer who fails to fulfill its statutory obligation under the NSA would perhaps be unnecessary if there were an adequate alternative means to ensure that insurers pay out-of-network providers the money owed under the statute. But no such alternative is apparent. While HHS might seek to impose civil monetary penalties if there were substantiated complaints of insurers subject to its jurisdiction failing to make timely payments of IDR determinations as required under the NSA, *see* 42 U.S.C. § 300gg-22(b)(2); 45 C.F.R. § 150.301, such enforcement would not ensure that CIDRE decisions are binding on the parties. The imposition of civil monetary penalties may indirectly encourage payment, but it would not be comprehensive, and it would not necessarily result in the provider compensation contemplated by Congress when it enacted the NSA. Similar shortcomings would apply to other available means of government enforcement. *See, e.g.*, 29 U.S.C. § 1132(a)(5) (recognizing an equitable cause of action for the Secretary of Labor to enforce ERISA); *Harrison v. Envision Mgmt. Holding, Inc.*, 59 F.4th 1090, 1112 (10th Cir. 2023) ("[I]t is unreasonable to assume that the DOL is capable of policing every employer-sponsored benefit plan in the country."). And while ERISA furnishes a means for a provider to obtain compensation if

the IDR award concerns an ERISA plan participant who has assigned his or her benefits to the provider, *see infra* Part II, that is likewise not comprehensive in multiple respects: the NSA applies to many non-ERISA plans, and relief under ERISA would be tethered to the existence of an assignment of benefits from a plan beneficiary. As explained below, the ERISA cause of action stems from Congress's judgment regarding a plan beneficiary's rights; independent of that, the NSA evinces Congress's judgment that a party to an IDR proceeding may seek an order compelling enforcement of a CIDRE's award regardless of the availability of a remedy under ERISA.

The availability of such a private cause of action under the NSA was confirmed in *GPS of New Jersey M.D., P.C. v. Horizon Blue Cross & Blue Shield*, No. 22-cv-6614, 2023 WL 5815821 (D.N.J. Sept. 8, 2023), a decision the district court did not cite. There, a provider sought to vacate an IDR award under the criteria specified in 9 U.S.C. § 10(a)(3)-(4), and the insurer filed a cross-motion to enforce the IDR award. *Id.* at *1, *3. The district court rejected the provider's challenge, *id.* at *4-10, and enforced the IDR award, explaining that the NSA "provides that any determination of the IDR entity is binding on the parties and is only subject to judicial review under the circumstances described in Section 10(a) of the Federal Arbitration Act." *Id.* at *10. The court correctly recognized that the NSA "gives the court the authority" to enforce the award. *Id.* That

conclusion also accords with the persuasive decision in *Cheminova A/S v. Griffin L.L.C.*, 182 F. Supp. 2d 68, 73-74 (D.D.C. 2002), which held that a party may seek judicial enforcement of a final arbitration order issued under a different statutory scheme.

The district court believed that Congress "did not intend to confer Plaintiffs a cause of action to enforce IDR awards" because the NSA provision allowing for vacatur "includ[es] language almost entirely forbidding judicial review of IDR decisions" and indicates that Congress "notably did not incorporate the FAA provision that enables parties to confirm arbitration awards." ROA.108. The court drew precisely the wrong conclusion from that provision. For the reasons already discussed, the proper conclusion to draw from the limitations Congress placed on judicial review of IDR decisions is that Congress intended that, absent such a vacatur through judicial review, the parties would remain bound by the IDR award and that award would be judicially enforceable. By restricting the circumstances in which an IDR decision could be "subject to judicial review," 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II), the NSA indicates that a party seeking to vacate or modify an award would be able to do so only in especially narrow circumstances such as where the award was procured by corruption or fraud. *See* 9 U.S.C. § 10(a)(1). Correspondingly,

unless the award is disturbed based upon such review, there is judicial authority to enter an order enforcing the award—without reviewing its merits.

B. Moreover, equitable relief may be available in appropriate circumstances to enforce a duty under federal law. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320 (2015). And plaintiffs may rely on that traditional equitable remedy to require HCSC to comply with the statutory mandate under the NSA to pay them. As the Supreme Court has explained, "[t]he fact that a judicial remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'" *Bowen v. Massachusetts*, 487 U.S. 879, 893 (1988). A case is properly classified as an "equitable action for specific relief" when the plaintiff seeks "the recovery of specific property *or monies*" rather than "monetary compensation for an injury to his person, property, or reputation." *Id.* (quotation marks omitted). That is precisely the nature of the relief plaintiffs seek here: an order directing HCSC to pay the specific sum dictated by the NSA that the NSA requires HCSC to pay plaintiffs. In these circumstances, plaintiffs may invoke the courts' equitable jurisdiction to pursue that relief. *See Transamerica Mortg. Advisors, Inc. v. Lewis*, 444 U.S. 11, 18-19 (1979) (holding that a statutory provision declaring certain contracts "void" "fairly implies a right to specific and limited relief in federal court"—there, an equitable right of rescission by the injured party to the contract).

II. Providers with assignments have standing to redress an insurer's failure to pay benefits in accordance with ERISA's surprise-billing provisions.

To the extent that they are assignees of benefits under plans covered by ERISA, plaintiffs are also entitled to enforce IDR awards through ERISA's cause of action for benefits due under a plan. The district court believed that plaintiffs lack standing to assert such a claim because the ERISA-plan participants the providers treated were not tangibly injured by defendant's alleged flouting of IDR awards. But those participants suffered a well-recognized, albeit intangible, contractual injury: the wrongful denial of ERISA plan benefits. As explained below, ERISA's surprise-billing provisions modify ERISA plan benefits by mandating coverage and payment requirements for certain out-of-network services. Plan participants thus have a contractual right to have the plan pay for this service. Violating these requirements is thus an invasion of contractual rights that plans and participants bargained for. That alone is sufficient to confer an injury-in-fact on plan participants, even in the absence of tangible harm like the threat of a balance bill. And as assignees standing in the shoes of plan participants, plaintiffs have standing to enforce that right to have HCSC make these payments to them as redress for these contractual injuries, in addition to their own independent injuries stemming from their statutory right to be paid in accordance with IDR awards.

A. ERISA's surprise-billing provisions modify benefits due under plan terms.

ERISA section 502(a)(1)(B) provides a plan participant or beneficiary a cause of action "to recover benefits due to him under the terms of his plan." 29 U.S.C. § 1132(a)(1)(B). "This provision is relatively straightforward. If a participant or beneficiary believes that benefits promised to him under the terms of the plan are not provided, he can bring suit seeking provision of those benefits." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 210 (2004).

But while "[t]he plan . . . is at the center of ERISA," *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 101 (2013), the interpretation and construction of its terms are not limited to the four corners of the plan itself. For one, ERISA provides that plan fiduciaries must interpret and apply plan terms consistent with ERISA's substantive provisions. 29 U.S.C. § 1104(a)(1)(D) (plan fiduciaries must apply the terms of the plan "insofar as such documents and instruments are consistent with the provisions of" Title I of ERISA); *see also Bauer v. Summit Bancorp*, 325 F.3d 155, 160 (3d Cir. 2003) ("We are required to enforce the Plan as written unless we find a provision of ERISA that contains a contrary directive." (quotation marks omitted)).

In addition, ERISA's substantive provisions can themselves directly modify plan benefits by supplying mandatory plan terms. *See Central Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 742, 750 (2004) (observing, in a suit "to

recover . . . suspended benefits," that ERISA's prohibition on forfeitures provides "a global directive that regulates the substantive content of pension plans" and "adds a mandatory term to all retirement packages that a company might offer"). This principle extends even to state insurance laws that are "saved" from the scope of ERISA's preemption provision. *See* 29 U.S.C. § 1144(b)(2)(A). For example, in *UNUM Life Insurance Co. of America v. Ward*, the Supreme Court found that a saved state insurance law "effectively create[d] a mandatory contract term that require[d] the insurer to prove prejudice before enforcing a timeliness-of-claim provision," and "supplied the relevant rule of decision for this § 502(a) suit." 526 U.S. 358, 374, 376-77 (1999) (quotation marks omitted); *cf. Arana v. Ochsner Health Plan*, 338 F. 3d 433, 438–39 (5th Cir. 2003) (holding that a participant's claim under a Louisiana anti-subrogation law should be re-characterized as a section 502(a)(1)(B) claim "under the terms of his ERISA plan" because the plan was required to be construed "in light of Louisiana law[.]"). Indeed, "[i]t is fundamental insurance law that '[e]xisting and valid statutory provisions enter into and form a part of all contracts of insurance to which they are applicable, and, together with settled judicial constructions thereof, become a part of the contract as much as if they were actually incorporated therein.'" *Plumb v. Fluid Pump Serv., Inc.*, 124 F.3d 849, 861 (7th Cir. 1997) (second alteration in original) (quoting 2 Lee R. Russ &

Thomas F. Segalla, Couch on Insurance 3d § 19:1, at 19–2 to 19–4 (1996)); *Norfolk & W. Ry. Co. v. American Train Dispatchers Ass'n*, 499 U.S. 117, 130 (1991) ("Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms." (quotation marks omitted)).

Two recent examples highlight these concepts. In *N.R. ex rel. S.R. v. Raytheon Co.*, 24 F.4th 740 (1st Cir. 2022), the First Circuit held that the plaintiff properly stated a claim for benefits under section 502(a)(1)(B) where a plan term allegedly violated ERISA's mental health parity provisions, 29 U.S.C. § 1185a. The court explained that plaintiff "properly pleads that the [challenged term] is trumped by ERISA and is accordingly unenforceable." *N.R.*, 24 F.4th at 752. As such, the participant could proceed with his claim for benefits "due to him under the terms of his plan" in accordance with ERISA's parity requirements. *Id.* (quoting 29 U.S.C. § 1132(a)(1)(B)).

The district court in *Open MRI & Imaging of RP Vestibular Diagnostics, P.A. v. Cigna Health & Life Insurance Co.* similarly held that an ERISA plan included statutorily mandated terms enforceable by a provider acting on an assignment. No. 20-cv-10345, 2022 WL 1567797, at *3 (D.N.J. May 18, 2022). In holding that the plaintiff stated a claim for benefits under ERISA section 502(a)(1)(B),

the court reasoned that "Congress mandated that health insurance plans cover COVID-19 testing, raising it to the status of a benefit of those plans." *Id.* at *6. And because "Congress also allows insureds to sue for benefits due to them," the court went on, "[i]t therefore stands to reason that an insured can sue under ERISA when an insurer denies coverage." *Id.*

Similarly, because ERISA's surprise-billing provisions mandate that plans pay benefits to out-of-network air ambulance providers in accordance with IDR determinations, that mandate is enforceable through a claim under section 502(a)(1)(B). The NSA, as codified in the PHSA and ERISA, explicitly requires insurers to pay non-participating air ambulance providers "the amount by which the out-of-network rate . . . for such services . . . exceeds the cost-sharing amount" owed by the participant. 42 U.S.C. § 300gg-112(a)(3)(B); 29 U.S.C. § 1185f(a)(3)(B). The statute further requires that the payment "shall be made directly to the nonparticipating provider or facility not later than 30 days after the date on which such determination is made." *Id.* §§ 300gg-111(c)(6), 300gg-112(b)(6); 29 U.S.C. § 1185f(b)(6). These provisions thus impose "a global directive that regulates the substantive content" of group health plans, *Central Laborers' Pension Fund*, 541 U.S. at 750, and "effectively create[] a mandatory contract term"—*i.e.*, to pay benefits in accordance with IDR awards, *Ward*, 526 U.S. at 374 (quotation marks omitted). A plan's failure to do so would thus

violate the plan (as modified by ERISA) and give rise to a wrongful denial of benefits claim under section 502(a)(1)(B). Any plan terms to the contrary would be "trumped by ERISA" and "unenforceable." *N.R.*, 24 F.4th at 752.

B. A denial of plan benefits confers an injury-in-fact regardless of whether a participant suffers a pocketbook injury.

Plaintiffs in this case are not the traditional plaintiffs in a wrongful denial of benefits claim under ERISA section 502(a)(1)(B), *i.e.*, plan participants and beneficiaries, but instead are providers that treated ERISA plan participants. Because plaintiffs asserted their ERISA claims as assignees of participants' rights to plan benefits, the district court treated plaintiffs' standing as derivative of the participants' standing. *See North Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182, 191 (5th Cir. 2015) ("It is well established that a healthcare provider, though not a statutorily designated ERISA beneficiary, may obtain standing to sue derivatively to enforce an ERISA plan beneficiary's claim." (quotation marks omitted)); *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens,* 529 U.S. 765, 773 (2000) ("[T]he assignee of a claim has standing to assert the injury in fact suffered by the assignor."). But the court erred in concluding that plan participants—and by extension, plaintiffs—were not injured when HCSC failed to pay benefits to plaintiffs in accordance with IDR awards because (a) the providers are prohibited under the NSA from balance

billing participants, and (b) participants have no obligation to pay the awards themselves. ROA.111-112.

"To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016). While "tangible injuries are perhaps easier to recognize . . . intangible injuries can nevertheless be concrete." *Id.* at 340. "In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles." *Id.* Specifically, the Supreme Court has deemed it "instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts." *Id.* at 341.

One such recognized harm is predicated on the violation of contract rights. As Justice Thomas explained in his concurrence in *Spokeo*, "[h]istorically, common-law courts possessed broad power to adjudicate suits involving the alleged violation of private rights, even when plaintiffs alleged only the violation of those rights and nothing more," noting that "'[p]rivate rights' have traditionally included . . . contract rights." 578 U.S. at 344 (Thomas, J., concurring). On that basis, many courts have held that invasions of contractual

rights impart a concrete injury for standing purposes without any additional showing of tangible harm. *See, e.g.*, *Tennessee Elec. Power Co. v. Tennessee Valley Auth.*, 306 U.S. 118, 137-38 (1939) (standing is available where "the right invaded is a legal right . . . arising out of [a] contract"); *Denning v. Bond Pharmacy, Inc.*, 50 F.4th 445, 451 (5th Cir. 2022) (finding that "a breach of contract is a sufficient injury for standing purposes"); *Amrhein v. eClinical Works, LLC*, 954 F.3d 328, 330-31 (1st Cir. 2020); *In re Thorpe Insulation Co.*, 677 F.3d 869, 887 (9th Cir. 2012); *DiCarlo v. St. Mary Hosp.*, 530 F.3d 255, 263 (3d Cir. 2008) (similar); *see also* Restatement (First) of Contracts § 328 cmt. a (Am. Law Inst. 1932) ("A breach of contract always creates a right of action," even when no financial "harm was caused." (emphasis omitted)).

Based on these principles, this Court has held that ERISA plan participants—as well as providers acting on assignments—have standing to redress a denial of benefits even where participants face no threat of being balance billed. In *North Cypress Med. Ctr.*, the district court (like the court here) had held that the provider-assignee lacked standing because it did not balance bill patients for charges their ERISA plans refused to pay. *See North Cypress Med. Ctr.*, 781 F.3d at 190. This Court reversed, finding that the plan's failure to "fulfill its contractual obligations . . . is all that is required to demonstrate Article

III standing," as the failure to pay benefits promised under the plan "denies the patient the benefit of her bargain." *Id.* at 193 (quotation marks omitted).

The Eighth Circuit held the same in *Mitchell v. Blue Cross Blue Shield of North Dakota*, 953 F.3d 529 (8th Cir. 2020). There, a plan participant and her husband entered into an agreement with an air ambulance provider, whereby the participant agreed to sue Blue Cross to recover denied benefits but faced no liability to the provider if the litigation was unsuccessful. *Mitchell*, 953 F.3d at 533-34. Even though plaintiffs had not made a payment to the provider, were not balance billed by the provider, and were not even at risk of being balance billed, the Eighth Circuit found that they nonetheless had standing: "a party to a breached contract has a judicially cognizable injury for standing purposes because the other party's breach devalues the services for which the plaintiff contracted and deprives them of the benefit of their bargain." *Id.* at 536 (quotation marks omitted). The court explained that "history and the judgment of Congress both indicate that the denial of plan benefits constitutes a cognizable injury in fact for purposes of constitutional standing" and that "plan participants are injured not only when an underpaid healthcare provider charges them for

the balance of a bill; they are also injured when a plan administrator fails to pay a healthcare provider in accordance with the terms of their benefits plan." *Id.*[4]

So too here. HCSC's failure to pay benefits in accordance with IDR awards injured ERISA plan participants by depriving them of their contractual right to benefits. ERISA plans are essentially written "contracts" that govern the benefits that ERISA plan sponsors (typically employers) offer employees in exchange for their labor. *See CIGNA Corp. v. Amara*, 563 U.S. 421, 440 (2011). Indeed, ERISA's "scheme . . . is built around reliance on the face of written plan documents," *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 83 (1995), and ERISA's "principal function[is] to 'protect [those] contractually defined benefits,'" *US Airways*, 569 U.S. at 100. And as explained above, ERISA plan benefits are defined not just by what is contractually provided in written plan

[4] *See also Spinedex Physical Therapy USA Inc. v. United Healthcare of Ariz., Inc.*, 770 F.3d 1282, 1289-91 (9th Cir. 2014) (concluding that the provider plaintiffs acting on assignments had Article III standing because the participants "had the legal right to seek payment" pursuant to their plan terms, regardless of whether or not they had been billed); *Springer v. Cleveland Clinic Emp. Health Plan Total Care*, 900 F.3d 284, 287 (6th Cir. 2018) (explaining that a plan participant "suffered an injury within the meaning of Article III because he was denied health benefits he was allegedly owed under the plan," and "[l]ike any private contract claim, his injury does not depend on allegation of financial loss"); *accord HCA Health Servs. of Ga., Inc. v. Employers Health Ins. Co.*, 240 F.3d 982, 991 (11th Cir. 2001); *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union v. Cookson Am., Inc.*, 710 F.3d 470, 474-75 (2d Cir. 2013) (per curiam).

documents, but also by State and federal laws that impose mandated benefits and other requirements.

ERISA's surprise-billing provisions impose such a mandate, as they effectively modify group health plans to require that they pay benefits in accordance with IDR awards. Participants who receive services from air ambulance providers are assured that their plan will compensate those providers based on IDR awards (where the IDR process is invoked), with participants' liability capped at the applicable cost sharing. The requirement that plans pay providers in accordance with IDR awards is thus a benefit to the participant, no different than a plan's payment arrangement with in-network providers. *Cf. Montefiore Med. Ctr. v. Teamsters Local 272*, 642 F.3d 321, 329-30 (2d Cir. 2011) (explaining that "[t]he difference between [a participant] receiving 'health care at no cost' and receiving direct reimbursement of one's costs is largely one of form, rather than of substance"). It follows, then, that a plan's failure to pay benefits in accordance with an IDR award is a wrongful denial of plan benefits. This contractual injury alone provides a basis for Article III standing to plan participants and any assignee acting in their stead, regardless of whether participants suffer any tangible harm. *North Cypress Med. Ctr.*, 781 F.3d at 193.

In addition, the district court failed to consider plaintiffs' own injuries, apart from the injuries they may assert as assignees of plan participants. Plaintiffs

themselves have a legally cognizable interest in the IDR-based payments that HCSC is required by statute to make and yet has allegedly refused to pay. *See* 29 U.S.C. § 1185f(b)(6); *cf. Vermont Agency*, 529 U.S. at 773 ("Congress can[] define new legal rights, which in turn will confer standing to vindicate an injury caused to the claimant."). This direct injury independently supports plaintiffs' standing to sue under ERISA section 502(a)(1)(B) separate from any injury incurred by plan participants. *See Vermont Agency*, 529 U.S. at 772 (explaining that a legally protected interest for standing purposes is one that "consist[s] of obtaining compensation for, or preventing, the violation of a legally protected right") (citations omitted).

CONCLUSION

For the foregoing reasons, the district court's order dismissing counts one and two of plaintiffs' complaint should be reversed.

Respectfully submitted,

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OCTOBER 2024

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2024, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system.

s/ Kevin B. Soter
Kevin B. Soter

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 6,419 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Calisto MT 14-point font, a proportionally spaced typeface.

s/ Kevin B. Soter
Kevin B. Soter

ADDENDUM

TABLE OF CONTENTS

42 U.S.C. § 300gg-111

§ 300gg-111. Preventing surprise medical bills

(a) Coverage of emergency services

(1) In general

If a group health plan, or a health insurance issuer offering group or individual health insurance coverage, provides or covers any benefits with respect to services in an emergency department of a hospital or with respect to emergency services in an independent freestanding emergency department (as defined in paragraph (3)(D)), the plan or issuer shall cover emergency services (as defined in paragraph (3)(C))-

. . .

(C) in a manner so that, if such services are provided to a participant, beneficiary, or enrollee by a nonparticipating provider or a nonparticipating emergency facility-

. . .

(iv) the group health plan or health insurance issuer, respectively-

(I) not later than 30 calendar days after the bill for such services is transmitted by such provider or facility, sends to the provider or facility, as applicable, an initial payment or notice of denial of payment; and

(II) pays a total plan or coverage payment directly to such provider or facility, respectively (in accordance, if applicable, with the timing requirement described in subsection (c)(6)) that is, with application of any initial payment under subclause (I), equal to the amount by which the out-of-network rate (as defined in paragraph (3)(K)) for such services exceeds the cost-sharing amount for such services (as determined in accordance with clauses (ii) and (iii)) and year;

. . .

(3) Definitions

. . .

(K) Out-of-network rate

The term "out-of-network rate" means, with respect to an item or service furnished in a State during a year to a participant, beneficiary, or enrollee of a group health plan or group or individual health insurance coverage offered by a health insurance issuer receiving such item or service from a nonparticipating provider or nonparticipating emergency facility-

. . .

(ii) subject to clause (iii), in the case such State does not have in effect such a law with respect to such item or service, plan, and provider or facility-

. . .

(II) if such provider or facility (as applicable) and such plan or coverage enter the independent dispute resolution process under subsection (c) and do not so agree before the date on which a certified IDR entity (as defined in paragraph (4) of such subsection) makes a determination with respect to such item or service under such subsection, the amount of such determination

. . .

(b) Coverage of non-emergency services performed by nonparticipating providers at certain participating facilities

(1) In general

In the case of items or services (other than emergency services to which subsection (a) applies) for which any benefits are provided or covered by a group health plan or health insurance issuer offering group or individual health insurance coverage furnished to a participant, beneficiary, or enrollee of such plan or coverage by a nonparticipating provider (as defined in subsection (a)(3)(G)(i)) (and who, with respect to such items and services, has not satisfied the notice and consent criteria of section 300gg–132(d) of this title) with respect to a visit (as defined by the Secretary in accordance with paragraph (2)(B)) at a participating health care facility (as defined in paragraph (2)(A)), with respect to such plan or coverage, respectively, the plan or coverage, respectively-

. . .

(D) shall pay a total plan or coverage payment directly, in accordance, if applicable, with the timing requirement described in subsection (c)(6), to such provider furnishing such items and services to such participant,

beneficiary, or enrollee that is, with application of any initial payment under subparagraph (C), equal to the amount by which the out-of-network rate (as defined in subsection (a)(3)(K)) for such items and services involved exceeds the cost-sharing amount imposed under the plan or coverage, respectively, for such items and services (as determined in accordance with subparagraphs (A) and (B)) and year;

. . .

(c) Determination of out-of-network rates to be paid by health plans; independent dispute resolution process

. . .

(5) Payment determination

. . .

(E) Effects of determination

(i) In general

A determination of a certified IDR entity under subparagraph (A)-

(I) shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim; and

(II) shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9.

. . .

(6) Timing of payment

The total plan or coverage payment required pursuant to subsection (a)(1) or (b)(1), with respect to a qualified IDR item or service for which a determination is made under paragraph (5)(A) or with respect to an item or service for which a payment amount is determined under open negotiations under paragraph (1), shall be made directly to the nonparticipating provider or facility not later than 30 days after the date on which such determination is made.

. . .

42 U.S.C. § 300gg-112

§ 300gg-112. Ending surprise air ambulance bills

(a) In general

In the case of a participant, beneficiary, or enrollee who is in a group health plan or group or individual health insurance coverage offered by a health insurance issuer and who receives air ambulance services from a nonparticipating provider (as defined in section 300gg–111(a)(3)(G) of this title) with respect to such plan or coverage, if such services would be covered if provided by a participating provider (as defined in such section) with respect to such plan or coverage-

. . .

(3) the group health plan or health insurance issuer, respectively, shall-

(A) not later than 30 calendar days after the bill for such services is transmitted by such provider, send to the provider, an initial payment or notice of denial of payment; and

(B) pay a total plan or coverage payment, in accordance with, if applicable, subsection (b)(6), directly to such provider furnishing such services to such participant, beneficiary, or enrollee that is, with application of any initial payment under subparagraph (A), equal to the amount by which the out-of-network rate (as defined in section 300gg–111(a)(3)(K) of this title) for such services and year involved exceeds the cost-sharing amount imposed under the plan or coverage, respectively, for such services (as determined in accordance with paragraphs (1) and (2)).

(b) Determination of out-of-network rates to be paid by health plans; independent dispute resolution process

. . .

(5) Payment determination

. . .

(D) Effects of determination

The provisions of section 300gg–111(c)(5)(E) of this title shall apply with respect to a determination of a certified IDR entity under subparagraph (A), the notification submitted with respect to such determination, the services with respect to such notification, and the parties to such

notification in the same manner as such provisions apply with respect to a determination of a certified IDR entity under section 300gg–111(c)(5)(E) of this title, the notification submitted with respect to such determination, the items and services with respect to such notification, and the parties to such notification.

. . .

(6) Timing of payment

The total plan or coverage payment required pursuant to subsection (a)(3), with respect to qualified IDR air ambulance services for which a determination is made under paragraph (5)(A) or with respect to an air ambulance service for which a payment amount is determined under open negotiations under paragraph (1), shall be made directly to the nonparticipating provider not later than 30 days after the date on which such determination is made.

. . .

29 U.S.C. § 1132

§ 1132. Civil enforcement.

(a) Persons empowered to bring a civil action

A civil action may be brought-

(1) by a participant or beneficiary-

. . .

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

. . .

9 U.S.C. § 10

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

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We are authorized to collect the information on this form and any supporting documentation under section 2799B-4(b)(3), 2799B-1, 2799B-2, 2799B-3, and 2799B-5 of the Public Health Service Act, as added by section 102 and 104 of the No Surprises Act, title I of Division BB of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260). This law directs the Departments of Labor, Health and Human Services (HHS), and the Department of Treasury (collectively, "the Departments") to establish a process to receive complaints regarding violations of the application of qualifying payment amount requirements by group health plans and health insurance issuers offering group or individual health coverage. The law also directs HHS to establish a process to receive consumer complaints regarding violations by health care providers, facilities, and providers of air ambulance services regarding balance billing requirements and to respond to such complaints within 60 days. CMS, an agency under HHS, is operating the complaints intake process on behalf of the Departments.

We need the information provided about you and the other individuals or entities you identify to process your complaint and to otherwise support resolution of your complaint and our oversight and enforcement of health insurance issuers or plans, providers, and facilities. The information will be used to determine the validity of your complaint, or refer your complaint to another federal or state regulatory agency. We may also refer or coordinate with another federal or state regulatory agency where more than one regulatory agency has jurisdiction over the complaint. The contact information you provided will be used to contact you if we need more information or

documentation about your complaint, and to notify you of the resolution of your complaint. We will also use the information you provide as necessary to enable us to fulfill a requirement of a Federal statute or regulation.

Providing the requested information is voluntary. But failing to provide it may delay or prevent processing of your complaint. If you don't provide correct information on this form or knowingly and willfully provide false or fraudulent information, you may be subject to a penalty and other law enforcement action.
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2. All parties to your complaint and their authorized representatives, including providers and facilities you identify as relevant to your complaint.
3. If you were covered under a group health plan provided by an employer during the dates of service relevant to your complaint – your employer or the insurance company that provides the coverage under your employer's health plan, as well as their employees, agents, authorized representatives, and contractors, such as a third-party administrator that processes claims under your plan.
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Final Report – Federal Market Conduct Examination of **Ambetter of Indiana**

1/15/2025

Examination #: 2023-NSA-MCE-6

Contents

I. Scope of Examination

The Center for Consumer Information and Insurance Oversight (CCIIO) conducted a Targeted Market Conduct Examination (Examination) of Ambetter of Indiana (Issuer), pursuant to section 2723(b) of the Public Health Service Act (PHS Act) and 45 C.F.R. § 150.313. The Examination was conducted pursuant to CMS's authority as outlined in CMS's letter to Indiana regarding enforcement of the provisions of the Consolidated Appropriations Act, 2021.[1]

The Examination was for items and services furnished during the period of January 1, 2022, through December 31, 2023 (Examination Period). The purpose of the Examination was to assess the Issuer's compliance with the following requirements under the title XXVII of the PHS Act:

- PHS Act § 2799A-1(a)(1)(C)(iv)(II), (b)(1)(D), and (c)(6) and implementing regulations at 45 C.F.R. §§ 149.110(b)(3)(iv)(B), 149.120(c)(4), and 149.510(c)(4)(ix) – Independent dispute resolution process and payment for emergency services and non-emergency services performed by nonparticipating providers at certain participating facilities; and

- PHS Act § 2799A-2(a)(3)(B) and (b)(6) and implementing regulations at 45 C.F.R. §§ 149.130(b)(4)(ii) and 149.520(b)(1) – Independent dispute resolution process for air ambulance services and payment.

CCIIO contracted with Examination Resources, LLC to assist CCIIO with conducting this review.

During this Examination, CCIIO requested information, records, and data related to written payment determinations made in the federal Independent Dispute Resolution (IDR) process involving the Issuer for qualified IDR items or services and payments the Issuer made following the federal IDR process. CCIIO requests included:

- Policies and procedures with respect to the handling of payments for qualified IDR items or services submitted to the IDR process;

- Electronic IDR notice records for all qualified IDR items or services under dispute; and

[1] Center for Consumer Information & Insurance Oversight, CAA Enforcement Letter to Indiana (as of Dec 15, 2021), available at https://www.cms.gov/cciio/programs-and-initiatives/other-insurance-protections/caa-enforcement-letters-indiana.pdf

- For each IDR notice record of a qualified IDR item or service, all associated documents, including those demonstrating final payment.

This report is by exception; therefore, the only areas indicated in the report are areas where findings were noted. Practices, procedures, and files subject to review during the Examination are omitted from this report if no findings are indicated. Some practices that do not comply with Federal statutes and regulations or those of other applicable jurisdictions may not have been discovered or noted in this report; however, any omission of such practices from this report does not constitute acceptance of such practices.

The Examination and testing methodologies followed standards established by the National Association of Insurance Commissioners[2] and procedures developed by CCIIO. CCIIO reviewed all IDR disputes involving the Issuer and submitted to the IDR process, which totaled 28 unique IDR disputes. The sample

Area Reviewed	Population	Sample Size
Certified IDR entity written payment determinations submitted to Issuer	28	28

[2] Market Regulation Handbook Examination Standards Summary 2022. https://content.naic.org/sites/default/files/publication-mes-hb-market-handbook-examination.pdf

II. Issuer Profile

Ambetter of Indiana, now known as Celtic Insurance Company, (Issuer) is domiciled in Illinois and is a wholly owned subsidiary of Celtic Group, Inc. (Celtic Group), a Delaware corporation. Celtic Group was acquired and became a wholly owned subsidiary of Centene Corporation, a Delaware stock corporation, on July 1, 2008.

The Company primarily offers individual health insurance coverage in Alabama, Arkansas, Delaware, Florida, Illinois, Indiana, Kansas, Missouri, New Hampshire, North Carolina, Oklahoma, Tennessee and Texas, through and outside of the health insurance Exchange.

Additionally, the Company operates under contract with the Arkansas Department of Human Services (AR DHS) to offer individual health plans on the health insurance exchange to Medicaid expansion members of the Arkansas Health and Opportunity for Me (ARHOME) program. The Company is operating under the AR DHS 2024 Memorandum of Understanding (MOU), which will expire December 31, 2024.

III. Examination Results

A. Failing to Pay the Amount Due Not Later Than 30 Calendar Days After the Determination by the Certified IDR Entity.

PHS Act § 2799A-1(a)(1)(C)(iv)(II), (b)(1)(D), and (c)(6), § 2799A-2(a)(3)(B) and (b)(6), and implementing regulations at 45 C.F.R. §§ 149.110(b)(3)(iv)(B), 149.120(c)(4), 149.130(b)(4)(ii), 149.510(c)(4)(ix), and 149.520(b)(1) – Payment for emergency services, non-emergency services performed by nonparticipating providers at certain participating facilities, and air ambulance services provided by non-participating air ambulance providers, Independent dispute resolution process, payment.

Plans and issuers are generally required to make payment to the nonparticipating provider, facility or provider of air ambulance services that was party to a dispute in the federal IDR process within 30 calendar days of the certified IDR entity's written payment determination or a payment agreement made during open negotiation. The plan or issuer must pay the total plan or coverage payment directly to the nonparticipating provider, facility or provider of air ambulance services that is equal to the amount by which the out-of-network rate for the items and services involved exceeds the cost-sharing amount for the items and services, less any initial payment amount.

CCIIO identified a violation in the following instances:

Finding 1 – The Issuer failed to pay the amount due no later than 30 calendar days after the payment determination by the certified IDR entity.

CCIIO identified 18 occurrences from the sample reviewed where the Issuer failed to pay the amount of the offer selected by the certified IDR entity, less the sum of the initial payment and any cost sharing paid or owed by the participant or beneficiary, to the nonparticipating provider, facility, or provider of air ambulance services no later than 30 calendar days after the determination.

Corrective Action:

The Issuer is directed to review its policies, procedures, and systems to ensure that final payment amounts due for qualified IDR items or services for which a certified IDR entity has made a payment determination are paid to the nonparticipating provider, facility, or provider of air ambulance services no later than 30 calendar days after such determination. Within 30 calendar days of the date of this final report, provide a copy of any updated policies and/or procedures and/or documentation of system updates to CCIIO.

Issuer response

The Issuer responded describing the corrective actions it implemented as follows:

> 1. To efficiently monitor the Federal Independent Dispute Resolution (IDR) Process from beginning to conclusion, the NSA Tracker platform was developed. The initial phase of the tracker, which focused solely on the Open Negotiation Request (ONR) Process, was deployed in August 2023. Phase two which addressed the Independent Dispute Request (IDR) workflow was deployed in February 2024. IDR processing cut over to the tracker full time in May 2024. With the implementation of phase 2, using Artificial Intelligence Optical Character Recognition (AIOCR) capabilities we can minimize manual entry to more speedily load IDR initiation notices into the tracker.
>
> With the delivery of the NSA platform, we have a single location to document and record the ruling date, adjustment amount, and the adjustment due date without having to refer to archived emails or various filing locations. With the implementation of the tracker, we have enhanced our ability to monitor dispute awards and their due dates daily.
>
> 2. We increased both permanent and temporary staff in 2024 to address the volume and quality of the requests. A Director dedicated to the unit was added in June 2024. In 2024, the unit also employed four claim analysts to focus on the dispute decision determinations process outside of regular claims processing. Triage roles have been established to ensure timely management of emails associated with the dispute process, prioritizing those marked as dispute awards. These awards are promptly sorted into a designated email folder and recorded in the tracker, with an internal target of processing them within one business day of receipt.
>
> 3. Starting 1/1/25 we will introduce an internal production goal of 95% of disputes paid within 25 days and 100% paid within 30 days.
>
> 4. Given the volume of disputes which are either duplicate, ineligible for Federal NSA processing and incomplete dispute communication which consume limited resources, we are introducing a Program Management team in October 2024 who will work with Certified Independent Dispute Entities (CIDREs) to reconcile inventory, appeal eligibility of disputes and enforce the cooling off period.
>
> 5. In 1Q24, we introduced the process of locking claims which were adjusted because of a dispute award. This will ensure these determinations are not

included in any other potential adjustment activities unrelated to the IDR process.

6. To ensure claims are adjusted correctly and timely, a quality audit program has been developed and is currently in draft form. A position for a quality specialist has been created and we are actively interviewing.

CCIIO Response

CCIIO acknowledges the corrective actions taken and planned by the Issuer. CCIIO requests the Issuer produce a self-audit on the results of the internal production goals after it has been implemented for three months. The results of this audit will be due to CCIIO by April 30, 2025. Starting with IDR determinations received January 1, 2025, the self-audit report should include actual results compared to the production goals outlined in the corrective action, specifically percentage of disputes paid within 25 days and percentage paid within 30 days. For all IDR determinations received January 1, 2025 and after, please include the following data points:

- IDR Dispute number
- Pre-IDR total initial payment amount
- Pre-IDR consumer cost sharing amount
- IDR determination date
- IDR payment determination amount
- Identification of the prevailing party in the IDR process
- Date IDR determination was processed
- Amount paid post IDR determination, if applicable
- Date of IDR payment, if applicable
- Post IDR consumer cost sharing amount
- Amount and explanation for any adjustments made to the IDR award amount
- An explanation for any payments beyond 30 days from the date of IDR determination notice, if applicable.

IV. Closing

CCIIO conducted an Examination of the Issuer to assess the Issuer's compliance with the requirement to make a total plan or coverage payment no later than 30 calendar days after a certified IDR entity makes a written payment determination. CCIIO reviewed all IDR disputes involving the Issuer and submitted to the IDR process, which totaled 28 unique IDR disputes. CCIIO identified one finding that totaled 18 occurrences.

V. Examination Report Submission

The courtesy and cooperation extended by the officers and employees of the Issuer during the course of the Examination are hereby acknowledged.

Jeff Wu, Deputy Director

Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services
U.S. Department of Health & Human Services

In addition, the following individuals participated in this Examination and in the preparation of this report:

Center for Consumer Information and Insurance Oversight

- Nicole McClain, MCM
- Angela Veney, Health Insurance Specialist

Examination Resources, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, -against- CIGNA HEALTH AND LIFE INSURANCE COMPANY Defendant.	Civil Action No.: 3:25-cv-00498-SRU

STATEMENT OF UNDISPUTED MATERIAL FACTS
PURSUANT TO LOCAL RULE 56 (a) 1
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Richard Agag, MD ("Dr. Agag" or "Plaintiff") submits this statement, pursuant to Local Civil Rule 56, to set forth the material facts as to which there is no genuine issue to be tried in connection with granting Plaintiff's Motion for Summary Judgment.

1. Plaintiff is a medical provider specializing in plastic and reconstructive surgery. Complaint, ¶ 5; Affidavit of Richard Agag, MD, ¶ 2.

2. As an out-of-network provider, Plaintiff does not have a network contract that would determine or limit payment for Plaintiff's services to Defendant's members. Complaint, ¶ 7; Affidavit of Richard Agag, MD, ¶ 4.

3. On April 14, 2023, Plaintiff provided medical services for an individual identified as M.L. ("Patient M.L.") at William W. Backus Hospital, a hospital located in Norwich, Connecticut. Complaint, ¶ 13; Affidavit of Richard Agag, MD, ¶ 3. On January 7, 2022, Plaintiff provided medical services for an individual identified as M.P. ("Patient M.P.") at Saint Mary's

Hospital, a hospital located in Waterbury, Connecticut. Complaint, ¶ 24; Affidavit of Richard Agag, MD, ¶ 3. (collectively, the "Patients").

4. At the time of their treatments, the Patients were each the beneficiaries of health plans issued or administrated by Defendant. Complaint, ¶ 6.

5. After treating Patients, Plaintiff submitted Health Insurance Claim Form ("HCFA") medical bills to Defendant seeking payment for the procedures, itemized under Current Procedural Terminology ("CPT") codes as follows:

a. As to Patient M.L., Plaintiff billed Defendant $196,000.00 for CPT Code 19364 (Complaint, ¶ 14);

b. As to Patient M.P., Plaintiff billed Defendant:

i. $9,226.40 for CPT code 35703 LT (Complaint, ¶ 25);

ii. $9,226.40 for CPT code 35703 RT (Complaint, ¶ 35);

iii. $7,700.00 for CPT code 15002 (Complaint, ¶ 45); and

iv. $31,752.40 for CPT code 32900 (Complaint, ¶ 55). *See* Affidavit of Richard Agag, MD, ¶ 5-6.

6. In response to Plaintiff's HCFAs, Defendant denied payment for both Patients. Complaint, ¶ 15, 26, 36, 46, 56; Affidavit of Richard Agag, MD, ¶ 7.

7. Plaintiff is out-of-network with Defendant and Patients' health plans ordinarily do not include coverage for out-of-network treatments. Complaint, ¶ 7.

8. Since the services were rendered emergently/inadvertently, Patients' out-of-network medical treatments are subject to reimbursement pursuant to the No Surprises Act (the "NSA"). Complaint, ¶ 8.

9. Pursuant to the NSA, an out-of-network provider reserves the right to dispute a health plan's reimbursement for qualifying out-of-network services and initiate a 30-day negotiation period. Complaint, ¶ 9.

10. Plaintiff disputed Defendant's payment determinations and initiated the negotiation period called for by the NSA. Complaint, ¶ 16, 27, 37, 47, 57.

11. Pursuant to the NSA, if the payment dispute between the provider and carrier is not resolved during the negotiation period, the provider has the right to initiate arbitration under which the proper reimbursement amount is determined by a neutral arbitrator. Complaint, ¶ 10.

12. Plaintiff initiated five arbitrations called for by the NSA (Complaint, ¶ 17, 28, 38, 48, 58) which were decided by the certified independent dispute resolution entity ("CIDRE") assigned to each arbitration, as follows:

a. On March 6, 2024, CIDRE Federal Hearings and Appeals Service, Inc., ruled in Plaintiff's favor under Arbitration Dispute DISP-878778, awarding Plaintiff a total of $97,500.00 for CPT code 19364. *See* **Exhibit A to Complaint**, attached hereto. *See* Affidavit of Richard Agag, MD, ¶ 8.

b. On December 19, 2024, CIDRE ProPeer Resources, LLC ("ProPeer"), ruled in Plaintiff's favor under Arbitration Dispute DISP-2001877, awarding Plaintiff a total of $5,535.84 for CPT code 35703 LT. *See* **Exhibit B to Complaint**, attached hereto. *See* Affidavit of Richard Agag, MD, ¶ 9.

c. On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001876, awarding Plaintiff a total of $5,535.84 for CPT code 35703 RT. *See* **Exhibit C to Complaint**, attached hereto. *See* Affidavit of Richard Agag, MD, ¶ 10.

d. On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001874, awarding Plaintiff a total of $7,700.00 for CPT code 15002. *See* **Exhibit D to Complaint**, attached hereto. *See* Affidavit of Richard Agag, MD, ¶ 11.

e. On December 19, 2024, ProPeer ruled in Plaintiff's favor under Arbitration Dispute DISP-2001871, awarding Plaintiff a total of $26,296.31 for CPT code 32900. *See* **Exhibit E to Complaint**, attached hereto. *See* Affidavit of Richard Agag, MD, ¶ 12.

13. Pursuant to the NSA, if it is determined in arbitration that an additional amount remains due, the insurer has 30 days from the date of the arbitration award to issue the additional payment. Complaint, ¶ 11, 20, 31, 41, 51.

14. Defendant has not issued any of the award payments to Plaintiff. Complaint, ¶ 65. Affidavit of Richard Agag, MD, ¶ 13.

15. As of November 21, 2025, more than 606 days have elapsed since the date of the award pursuant to DISP-878778.

16. As of November 21, 2025, more than 300 days have elapsed since the awards were entered in DISP-2001877, DISP-2001876, DISP-2001874, and DISP-2001871.

Dated: New Haven, Conn.
November 21, 2025

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EXHIBIT A TO COMPLAINT -
CIDRE, FEDERAL HEARINGS AND APPEALS SERVICES, INC.'S RULING,
DISP-878778, DATED MARCH 6, 2024
(REPRODUCED HEREIN AT PP. JA-19 – JA-23)

EXHIBIT B TO COMPLAINT -
CIDRE, PROPEER RESOURCES, LLC'S RULING,
DISP-2001877, DATED DECEMBER 19, 2024
(REPRODUCED HEREIN AT PP. JA-24 – JA-26)

EXHIBIT C TO COMPLAINT -
CIDRE, PROPEER RESOURCES, LLC'S RULING,
DISP-2001876, DATED DECEMBER 19, 2024
(REPRODUCED HEREIN AT PP. JA-27 – JA-29)

EXHIBIT D TO COMPLAINT -
CIDRE, PROPEER RESOURCES, LLC'S RULING,
DISP-2001874, DATED DECEMBER 19, 2024
(REPRODUCED HEREIN AT PP. JA-30 – JA-32)

EXHIBIT E TO COMPLAINT -
CIDRE, PROPEER RESOURCES, LLC'S RULING,
DISP-2001871, DATED DECEMBER 19, 2024
(REPRODUCED HEREIN AT PP. JA-33 – JA-35)

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD Plaintiff, v. CIGNA HEALTH AND LIFE INSURANCE COMPANY, Defendant.	Civil Action No. 3:25-CV-00498-SRU PROPOSED ORDERS

PLAINTIFF'S PROPOSED ORDERS

The Court, having considered the papers in support of Defendant's Motion to Dismiss, Plaintiff's Opposition the Motion to Dismiss, Plaintiff's Motion to Confirm, and Plaintiff's Motion for Summary Judgment, and any opposition thereto, and for good cause shown,

IT IS, on this _____ day of _____, 2025

ORDERED that Defendant's Motion to Dismiss is hereby **DENIED;**

ORDERED that Plaintiff's Motion to Confirm is hereby **GRANTED;**

ORDERED that Plaintiff's Motion for Summary Judgment is hereby **GRANTED;**

Dated: November _____, 2025

_____
The Honorable Stefan R. Underhill, U.S.D.J

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD AGAG, MD,

Plaintiff,

v.

CIGNA HEALTH AND LIFE INSURANCE COMPANY,

Defendant.

Civil Action No. 25-498-SRU

Document electronically filed

DEFENDANT CIGNA HEALTH AND LIFE INSURANCE COMPANY'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF RICHARD AGAG, MD'S COMPLAINT AND IN OPPOSITION TO PLAINTIFF'S CROSS-MOTIONS TO CONFIRM AND FOR SUMMARY JUDGMENT

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Dated: January 12, 2026

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Defendant Cigna Health and Life Insurance Company ("Cigna") respectfully submits this reply memorandum of law in further support of its Motion to Dismiss Plaintiff Richard Agag, MD's ("Plaintiff") Complaint (ECF No. 1), and in opposition to Plaintiff's Cross-Motions to Confirm and for Summary Judgment.

PRELIMINARY STATEMENT

Plaintiff's Complaint warrants dismissal with prejudice because Plaintiff has no private right under the No Surprises Act, 42 U.S.C. § 300gg-111 et seq. ("NSA"), to bring an action against Cigna in federal district court to obtain judicial confirmation of an Independent Dispute Resolution ("IDR") determination through Section 9 of the Federal Arbitration Act ("FAA"), or judicial enforcement of an alleged NSA violation related to an IDR determination. In more than twenty decisions across various jurisdictions—including several new decisions since Cigna filed its Motion to Dismiss—courts have overwhelmingly held that no private right of action exists under the NSA to seek judicial confirmation or enforcement of an IDR determination, and have dismissed complaints involving nearly identical causes of action as pleaded here.

In those dismissals, courts have coalesced around the following conclusions: (1) the NSA does not provide a private right of action to seek judicial confirmation of an IDR award under Section 9 of the FAA, or enforcement of an alleged violation of the statute; (2) Congress explicitly confined judicial review under the NSA only to instances when a party seeks vacatur of an IDR award and, for the avoidance of all doubt, further directed that in all other instances IDR determinations "shall not be subject to judicial review"; (3) confirmation under Section 9 of the FAA is inapplicable to IDR determinations because the parties never agreed to arbitrate, and the IDR process is fundamentally different than an arbitration proceeding subject to the FAA; and (4) Congress set forth a robust scheme of state and federal administrative enforcement to police the

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IDR process, a key factor which shows that Congress intended for any remedy to exist solely through administrative means.

Accordingly, Plaintiff's remedy, should one exist, is with federal and state authorities. Rather than seek enforcement through the applicable administrative agencies as Congress intended, Plaintiff improperly sued Cigna and seeks judicial relief, including conformation of the IDR awards at issue, plus attorneys' fees, interests, and costs of suit. But without a recognized right of action, its suit against Cigna fails as a matter of law. For these reasons and more, Plaintiff's cross-motions to confirm and for summary judgment should also be denied. Even assuming Plaintiff could plead a cause of action under the NSA, which it cannot, the NSA does not apply to the underlying claims. Each of the claims at issue were denied for lack of coverage under the patient's health benefit plan, not because of a payment dispute, and were therefore ineligible for the NSA IDR determination process. Consequently, and as set forth more fully in Cigna's Motion to Dismiss, Plaintiff's Complaint should be dismissed with prejudice and its cross motions denied.

ARGUMENT

Plaintiff has not shown that Congress intended to create a right of action under the NSA for private parties, like Plaintiff, to seek judicial confirmation of IDR determinations under § 9 of the FAA, or judicial enforcement of IDR determinations under the NSA. Because the NSA provides no right to relief in federal district court, this Court should join the overwhelming flood of decisions concluding the NSA contains no private right of action to confirm or enforce an IDR award.[1]

[1] *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275 (5th Cir. 2025); *Savalia v. Blue Shield of Cal. Life & Health Ins. Co.*, No. 8:25-cv-02031 (KES), 2025 U.S. Dist. LEXIS 261150 (C.D. Cal. Dec. 16, 2025); *Worldwide Aircraft Servs., Inc. v. Freedom Life Ins. Co. of Am.*, No. 25-01158 (WFJ), 2025 U.S. Dist. LEXIS 256246 (M.D. Fla. Dec. 11, 2025) ("*Worldwide v. Freedom*"); *PHI Health, LLC v. Keating Auto Grp. Emp. Benefit Plan Tr.*, No. 4:24-cv-2832, 2025 U.S. Dist. LEXIS 258769 (S.D. Tex. Nov. 4, 2025), *R. & R. adopted*, *PHI Health, LLC v. Entrust, LLC*, No. H-24-2832, 2025 U.S. Dist. LEXIS 257380 (S.D. Tex. Dec. 11, 2025); *Mitchell F. Reiter MD PC v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-12526 (WJM), 2025 U.S. Dist. LEXIS 253333 (D.N.J. Dec. 8,

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I. PLAINTIFF DOES NOT DISPUTE THAT THE NSA CONTAINS NO EXPRESS RIGHT OF ACTION TO CONFIRM OR ENFORCE AN IDR AWARD

Plaintiff does not dispute that it lacks an express right of action to support either count of its Complaint. The NSA provides neither an express right of action to seek judicial confirmation of an IDR determination under Section 9 of the FAA (count one), or judicial enforcement of an alleged violation of the statute for failure to timely pay an IDR determination (count two). *See* Plaintiff's Opposition Brief ("Opp. Br."), ECF No. 33 (arguing only in support of an implied right of action).

The lack of any express cause of action is significant because "[i]mplied rights of action are 'disfavored[.]'" *Peterson v. Bank Markazi*, 121 F.4th 983, 1003 (2d Cir. 2024) (quoting *Moya v. U.S. Dep't of Homeland Sec.*, 975 F.3d 120, 128 (2d Cir. 2020)). Because Congress did not provide an express private right of action in the NSA, Plaintiff must satisfy a high bar to show that

2025); *T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n,* Nos. 25-499 (CS); 25-1255 (CS); 25-1264 (CS); 25-2049 (CS), 2025 U.S. Dist. LEXIS 252293 (S.D.N.Y. Dec. 5, 2025); *Interventional Pain Mgmt. v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-12032 (SRC), U.S. Dist. LEXIS 253755 (D.N.J. Dec. 3, 2025); *Douglas Spiel, MD, PA. v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-14769 (SRC), 2025 U.S. Dist. LEXIS 234536 (D.N.J. Dec. 2, 2025); *Tamagnini v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-02022 (SRC), 2025 U.S. Dist. LEXIS 234534 (D.N.J. Dec. 2, 2025); *Complete Med. Wellness LLC v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-04177 (SRC), 2025 U.S. Dist. LEXIS 233638 (D.N.J. Dec. 1, 2025); *Garden State Pain Mgmt. v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-05679 (SRC), 2025 U.S. Dist. LEXIS 233633 (D.N.J. Dec. 1, 2025); *Worldwide Aircraft Servs. v. United Healthcare*, No. 8:24-cv-2527 (TPB), 2025 U.S. Dist. LEXIS 233132 (M.D. Fla. Nov. 28, 2025) ("*Worldwide v. United*"); *Ne. Neurosurgical Assocs. v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-06288 (SRC), 2025 U.S. Dist. LEXIS 231385 (D.N.J. Nov. 25, 2025); *Freeman Pain Inst. P.A. d/b/a Redefine Health v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-02507 (SRC), 2025 U.S. Dist. LEXIS 230402 (D.N.J. Nov. 24, 2025); *Mod. Orthopaedics of NJ v. Premera Blue Cross*, No. 25-1087 (BRM), 2025 U.S. Dist. LEXIS 215824 (D.N.J. Nov. 3, 2025); *E. Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Ins. Co.*, Nos. 25-cv-00255 (PAE) & 25-cv-01686 (PAE), 2025 U.S. Dist. LEXIS 157911, at *17 (S.D.N.Y. Aug. 14, 2025); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:25-cv-00167 (MSS), 2025 U.S. Dist. LEXIS 155594 (M.D. Fla. Aug. 12, 2025) ("*Worldwide v. Worldwide*"); *Jeffrey Farkas, M.D., LLC v. Horizon Blue Cross Blue Shield of N.J.*, 790 F. Supp. 3d 129 (E.D.N.Y. 2025); *Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076 (M.D. Fla. 2023), *appeal dismissed*, 2024 U.S. App. LEXIS 17493 (11th Cir. May 30, 2024); *FHMC LLC v. Blue Cross & Blue Shield of Ariz. Inc.*, No. 23-00876-PHX, 2024 U.S. Dist. LEXIS 62018 (D. Ariz. Apr. 3, 2024); *Los Robles Emergency Physicians Med. Grp. v. Stanford-Franz*, No. 2:23-cv-09487 (DSF), 2024 U.S. Dist. LEXIS 23971 (C.D. Cal. Feb. 8, 2024); *see also Neurospine Plus, LLC v. Aetna, No. 25-3022 (EP)*, 2026 U.S. Dist. LEXIS 2656 (D.N.J. Jan. 7, 2026); *Prime Neuro Spine Inst. v. Aetna Life Ins. Co.*, No. 25-1053 (EP), 2026 U.S. Dist. LEXIS 2704 (D.N.J. Jan. 7, 2026); *Neuromon Pros. LLC v. Aetna Life Ins. Co.*, No. 25-1701 (SDW), 2025 U.S. Dist. LEXIS 261584 (D.N.J. Dec. 18, 2025); *N. Jersey Neurosurgical Assocs. PA. v. Horizon Blue Cross Blue Shield of N.J.*, No. 25-12593 (SDW), 2025 U.S. Dist. LEXIS 261572 (D.N.J. Dec. 18, 2025).

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Congress intended to imply a private right of action despite omitting such a provision within the statute itself. And to prove the existence of an unexpressed cause of action, Plaintiff must show that the statute "displays an intent to create not just a private right but also a private remedy." *Republic of Iraq v. ABB AG*, 768 F.3d 145, 170 (2d Cir. 2014), *cert. denied*, 576 U.S. 1028 (2015). (quoting *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001)). In other words, "the text and structure of the statute" must "yield a clear manifestation of congressional intent to create a private cause of action before a court can find such a right to be implied." *Lopez v. Jet Blue Airways*, 662 F.3d 593, 596 (2d Cir. 2011). Plaintiff therefore has not shown, nor can it show, a "clear manifestation of congressional intent" to create a private right and remedy under the NSA.

II. PLAINTIFF HAS NOT SHOWN THAT THE NSA CONTAINS AN IMPLIED PRIVATE RIGHT OF ACTION TO CONFIRM OR ENFORCE AN IDR AWARD

A. Section 9 of the FAA Does Not Apply to IDR Determinations Issued Under the NSA (Count One)

Despite near universal rejection of its claim by numerous courts across the country, Plaintiff continues to push a debunked theory that the NSA contains implied Congressional intent to create a right for private parties to seek judicial confirmation of IDR determinations through Section 9 of the FAA. No so. Rather, when applying traditional and well-accepted principles of statutory interpretation, as courts have done in numerous decisions in various circuit and district courts across the country, the NSA plainly precludes a private party from obtaining judicial confirmation of an IDR award under Section 9 of the FAA.

First, start with the text itself. The text does not incorporate Section 9 of the FAA. Thus, "the NSA's plain text bars this suit." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 276 (5th Cir. 2025) ("*Guardian Flight*"), *cert. denied* No. 25-441 (U.S. Jan. 12, 2026); *see also E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *48 (holding that "[t]he statutory text thus forecloses of a private right of action to enforce IDR determinations"). And though

Congress declined to incorporate Section 9 of the FAA, it did incorporate Section 10 of the same statute. *See Guardian Flight*, 140 F.4th at 276 ("Congress chose not to incorporate § 9 into the NSA," rather, "[i]t incorporated only parts of § 10." (citing 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II)). When Congress wants to create a cause of action under Section 9 it knows how and has done so before. "Congress knew how to create a private right of action in the NSA—and has done so elsewhere—but declined to do so." *Guardian Flight*, 140 F.4th at 276; *Mod. Orthopaedics of NJ*, 2025 U.S. Dist. LEXIS 215824, at *14 ("[A]t times, Congress has seen fit to incorporate Section 9 of the FAA in other statutes to allow for judicial enforcement," but "chose not to in the NSA."). Congress's choice must be given effect. *See Mod. Orthopaedics of NJ*, 2025 U.S. Dist. LEXIS 215824, at *14 ("The Court reads this choice [to incorporate Section 10 but omit Section 9] as deliberate, reflecting the markedly different legal and policy rationales for arbitration and IDR respectively."); *Worldwide v. Freedom*, 2025 U.S. Dist. LEXIS 256246, at *5 ("[Plaintiff's] claim to enforce the IDR award fails as a matter of law because the NSA only incorporates 9 U.S.C. § 10(a) of the [FAA] and expressly omits any reference to 9 U.S.C. § 9 of the FAA, which provides for confirming arbitration awards.").

Not only is Section 9 absent from the NSA, the statute explicitly bars access to judicial relief of any kind except to seek vacatur of an IDR determination. The text is clear: "A determination of a certified IDR entity . . . shall not be subject to judicial review, ***except*** in a case described in any of paragraphs (1) through (4) of section 10(a)" of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II) (emphasis added). In other words, not only did Congress not incorporate Section 9 into the NSA, it precluded any private cause of action other than the right to petition for *vacatur* of an IDR determination, which is not applicable here. *See Reiter MD*, 2025 U.S. Dist. LEXIS 253333, *13 ("This Court agrees with the substantial majority," finding "[t]he plain text

of the NSA does not incorporate FAA § 9 and clearly precludes judicial review except in cases described in § 10(a) of the FAA."); *Worldwide v. United*, 2025 U.S. Dist. LEXIS 233132, at *4 ("A majority of the federal courts that have considered the issue . . . have similarly concluded that the NSA's IDR provisions do not give rise to a federal cause of action and that IDR awards are not enforceable under the FAA.") (citing cases).

Second, and as several courts have detailed, Section 9 of the FAA is incompatible with the NSA because the parties did not agree to arbitrate, and private arbitration proceedings are fundamentally different than the statutorily-compelled IDR process. *See, e.g.*, *Freeman Pain Inst. P.A.*, 2025 U.S. Dist. LEXIS 230402, at *11 ("The Court lacks jurisdiction to confirm the arbitration award because the IDR process is not an arbitration and there is no enforceable arbitration award."). The parties did not agree voluntarily to enter the IDR process; rather IDR is compelled under the NSA. By contrast, an arbitration is not eligible for confirmation under the FAA unless, *inter alia*, the parties show a written agreement to arbitrate. *See* 9 U.S.C. § 2 (requiring a written provision evidencing agreement to arbitrate); *id.* at § 9 (conditioning confirmation on an "agreement" to arbitrate). Accordingly, "[f]rom this language, it is clear that § 9, like the FAA as a whole, contemplates a written arbitration agreement between the parties." *T.V. Seshan M.D.*, 2025 U.S. Dist. LEXIS 252293, at *13–14. And, as set forth more fully in Cigna's moving brief, Plaintiff readily acknowledges a lack of any contractual agreement with Cigna. *See* Cigna's Br. at 22–23 (citing Compl. ¶¶ 7, 68). As such, the parties' "participation in the IDR process was statutory compelled, with no prior agreement to submit to arbitration – both Plaintiff and Defendant were *required* to participate in the process by statute," and thus "[t]he lack of a written agreement between the parties to submit to arbitration removes the IDR process entirely from eligibility for confirmation under the FAA as the 'FAA reflects the fundamental

principle that arbitration is a matter of contract.'" *Freeman Pain Inst.*, 2025 U.S. Dist. LEXIS 230402, at *12–13 (quoting *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010)). Accordingly, Plaintiff's "argument that it has a freestanding cause of action under § 9 of the FAA, wholly apart from the NSA, fails because § 9 is expressly premised on the existence of an agreement to arbitrate." *Worldwide v. United*, 2025 U.S. Dist. LEXIS 233132, at *5.

Moreover, Plaintiff's assertion that Congress intended to create an implied right to seek judicial confirmation of an IDR award under Section 9 of the FAA is founded on a flawed premise. Because Congress incorporated Section 10 of the FAA, Plaintiff theorizes that Congress *must have* meant to also incorporate Section 9. But Plaintiff gets the inquiry backwards; courts presume the opposite. Instead, Courts ordinarily presume that Congress acted intentionally when it incorporates one provision of a statute but omits another. *See Verizon Commc'ns Inc. v. FCC*, 156 F.4th 86, 96–97 (2d Cir. 2025) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion[.]" (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983))). Courts have applied *Russello* to the NSA. *See Mod. Orthopaedics of NJ*, 2025 U.S. Dist. LEXIS 215824, at *14 (applying *Russello* principle when concluding "[h]ere, Congress chose to include particular language—incorporating Section 10 of the FAA to allow the Courts to vacate IDR awards—but omitted any parallel language allowing the Court to confirm an IDR award," and thus "[t]he Court reads this choice as deliberate, reflecting the markedly different legal and policy rationales for arbitration and IDR respectively"). "Federal courts have previously found this distinction critical, as the NSA provides only a private right of action to vacate an IDR award, not to enforce it." *Worldwide v. Freedom*, 2025 U.S. Dist. LEXIS 256246, at *6.

To hold that the NSA permits a cause of action to confirm an award under Section 9 of the FAA "would violate [the *Russello*] principle by declining to give any effect to the conspicuous omission of" Section 9 in the NSA. *Ziparo v. CSX Transp., Inc.*, 15 F.4th 153, 161 (2d Cir. 2021). For similar reasons, "[Courts] ordinarily resist reading words or elements into a statute that do not appear on its face." *Dean v. United States*, 556 U.S. 568, 572 (2009) (quoting *Bates v. United States*, 522 U.S. 23, 29 (1997)). Plaintiff asks this Court to read Section 9 into the NSA but to do so would violate the "fundamental principle of statutory interpretation that absent provisions cannot be supplied by the courts." *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (internal quotations marks and citation omitted).

For theses reasons, and as more fully set forth in Cigna's moving brief and the numerous decisions rejecting Plaintiff's arguments, Plaintiff enjoys no legal right to obtain judicial confirmation of an IDR award under Section 9 of the FAA.

B. The NSA Provides No Private Right of Action to Enforce an IDR Determination (Count Two)

Plaintiff similarly fails to show that the NSA contains an implied private right of action to enforce an IDR award. Rather, just as Congress did not permit confirmation proceedings under Section 9, Plaintiff also cannot demonstrate that Congress intended to grant broader private enforcement rights either.

In support of its argument that the NSA authorizes private litigants implied enforcement powers, Plaintiff relies almost exclusively on an isolated reading of the provision that IDR awards shall be "binding upon the parties involved":

> (i) In general. A determination of a certified IDR entity under subparagraph (A)—
>
> (I) shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim; and

> (II)shall not be subject to judicial review, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9, United States Code.

42 U.S.C. § 300gg-111(c)(5)(E)(i)(I)–(II)).

But Plaintiff's use of the phrase "shall be binding on the parties involved" as evincing an implied right misreads the larger context of the NSA and disregards the fundamental interpretive principle that provisions of a statute should be read harmoniously. *See, e.g.*, *Biden v. Texas*, 597 U.S. 785, 827 (2022) (Alito, J., dissenting) (describing the harmonious-reading canon). Rather, subparagraph (I) of 42 U.S.C. § 300gg-111(c)(5)(E)(i) must be interpreted alongside subparagraph (II) so as to read the parallel provisions in unity. Because subparagraph (II) limits judicial review to vacatur actions under § 10(a) of the FAA, subparagraph (I) cannot be read to *imply* a right to judicial confirmation or enforcement of an IDR award when its sister provision explicitly forbids it. And certainly neither provision extends judicial review to an action to enforce or confirm an IDR determination under § 9 of the FAA.

To the extent Congress wished to create a private right of action to confirm or enforce an IDR determination, it could have written the statute differently, either by expressly incorporating § 9 of the FAA into 42 U.S.C. § 300gg-111(c)(5)(E)(i), or by not enacting text that explicitly limits the jurisdiction of this Court. *See Guardian Flight*, 140 F.4th at 276 (citing statutory example where Congress created a private right of action to enforce an arbitration award under § 9 of the FAA). Instead, and when read in context with the broad administrative enforcement powers, the better reading of the statute shows Congress's deliberate choice to enact a bifurcated scheme that delegates enforcement of "binding" IDR awards to the United States Department of Health and Human Services and other federal and state administrative agencies tasked with oversight of the NSA, and authorizes judicial review over more fact-determinative actions to vacate IDR awards using the framework set forth under § 10(a) of the FAA. Not only does Plaintiff's abridged reading

of the NSA fail to show an implied right "in clear and unambiguous terms," *Gonzaga Univ. v. Doe*, 536 U.S. 273, 290 (2002), a burden Plaintiff must carry, in fact "the NSA's text and structure point in the opposite direction," *Guardian Flight*, 140 F.4th at 275; *see also T.V. Seshan M.D.*, 2025 U.S. Dist. LEXIS 252293, at *25 ("The Court cannot ignore the plain language of the statute and 'interpret language forbidding judicial review except to vacate an award to mean forbidding judicial review except to vacate *or enforce* an award.'" (quoting *Mod. Orthopaedics of NJ*, 2025 U.S. Dist. LEXIS 215824, at *12)); *Reiter MD*, 2025 U.S. Dist. LEXIS 253333, at *7 (finding an argument that "the NSA allows a 'final and binding' IDR award to be confirmed under the FAA § 9," is a "position [] not supported by the text of the NSA.").

Plaintiff also misreads the larger context of the NSA, and dismisses entirely the robust enforcement mechanisms Congress incorporated to police IDR determinations. Instead, Plaintiff advances two other policy arguments. *First*, Plaintiff argues repeatedly that without reading a judicial enforcement role such as Section 9 of the FAA into the NSA, IDR awards would be rendered "meaningless." *See* Opp. Br. at 5, 6, 9, 17. *Second*, Plaintiff posits that the "NSA's enforcement provisions are not exclusive and are wholly inadequate." *See id.* at 13. Neither argument is persuasive.

Despite Plaintiff's attempt to downplay Congress's choice to task state and federal administrative agencies with enforcement authority, many courts have found the existence of a detailed administrative mechanism as strong evidence that Congress intended it to be the exclusive remedy. *See, e.g.*, *Guardian Flight*, 140 F.4th at 277; *T.V. Seshan M.D.*, 2025 U.S. Dist. LEXIS 252293, at *26–27 ("[B]ecause the statute supplies an administrative remedy, it does not appear that Congress intended to imply a judicial remedy a well."); *Mod. Orthopaedics of NJ*, 2025 U.S. Dist. LEXIS 215824, at *24 (finding that "Congress did create a robust system of administrative

enforcement," and holding that it "has no jurisdiction to confirm [plaintiff's IDR] award"); *see also Sandoval*, 532 U.S. at 290–91 (noting that the inclusion of a remedial scheme in the statute suggests that Congress "intended to preclude" any other remedy).[2] "This inference from the NSA's broader structure, then, is plain," that "[t]he NSA's structure conveys Congress's policy choice to enforce the statute through administrative penalties, not a private right of action." *Guardian Flight*, 140 F.4th at 277; *see also FHMC LLC*, 2024 U.S. Dist. LEXIS 62018, at *9 ("An implied right of action" under the NSA "is incongruous with such a detailed statutory scheme, in which judicial review is limited to specific instances."). Accordingly, the administrative review and enforcement mechanisms incorporated into the NSA is a compelling factor weight against finding a competing judicial pathway to enforcement. *See Moya*, 975 F.3d at 128 (noting that "[t]he availability of these alternative mechanisms to enforce [a statute] strongly suggests that Congress did not intend to imply a superfluous private right of action").

Moreover, Plaintiff's elevation of atextual policy considerations such as the adequacy of state and federal administrative enforcement capabilities conflicts with *Sandoval*'s instruction that courts may not create a cause of action without determinative textual support "no matter how desirable that might be as a policy matter[.]" *Sandoval*, 532 U.S. at 287; *see also Guardian Flight*, 140 F.4th at 277 ("Understandably, Providers would prefer a different mechanism for resolving provider-insurer disputes. But the wisdom of Congress's policy choice is beyond [the court's] judicial ken."). And "alleged deficiencies and inadequacies in the state of the enforcement mechanisms do not negate the fact that Congress did, indeed, create an administrative enforcement

[2] *See also Worldwide v. Freedom*, 2025 U.S. Dist. LEXIS 256246, at *7; *Reiter MD*, 2025 U.S. Dist. LEXIS 253333, at *12; *Spiel, MD*, 2025 U.S. Dist. LEXIS 234536, at *20; *Tamagnini*, 2025 U.S. Dist. LEXIS 234534, *16; *Complete Med. Wellness*, 2025 U.S. Dist. LEXIS 233638, at *20; *Garden State Pain Mgmt.*, 2025 U.S. Dist. LEXIS 233633, at *20; *Worldwide v. United*, 2025 U.S. Dist. LEXIS 233132, at *4; *Ne. Neurosurgical Assocs.*, 2025 U.S. Dist. LEXIS 231385, at *17–18; *Freeman Pain Inst. P.A.*, 2025 U.S. Dist. LEXIS 230402, at *17–18; *Med-Trans Corp.*, 700 F. Supp. 3d at 1087; *Los Robles*, 2024 U.S. Dist. LEXIS 23971, at *4–5.

regime." *Freeman Pain Inst.*, 2025 U.S. Dist. LEXIS 230402, at *20; *see also Worldwide v. United*, 2025 U.S. Dist. LEXIS 233132, at *5 ("[T]he desirability of enforcement to further statutory goals cannot support the creation of an implied private cause of action in the absence of legislative intent to do so as shown by the terms of the statute itself."). In sum, courts have wholesale rejected Plaintiff's post-enactment, policy-based arguments of what the law ought to be:

> Plaintiff's mere dissatisfaction with an existing administrative remedy does not justify judicial intervention. The NSA establishes a clear administrative enforcement scheme, specifying the *exclusive* process for resolving out-of-network payment disputes and limiting judicial review to the narrow vacatur provisions set forth in FAA § 10(a), none of which apply here. *See* § 300gg-111(c)(5)(E)(i)(II). The Court's role is therefore limited to applying the statute as written; Plaintiff's frustration with administrative remedies does not confer authority to overstep a clear statutory boundary. Plaintiff seeks to essentially invent a cause of action under the NSA, but a 'fundamental principle of statutory interpretation [is] that absent provisions cannot be supplied by the courts.' *Rotkiske v. Klemm*, 589 U.S. 8, 14, (2019).

Freeman Pain Inst., 2025 U.S. Dist. LEXIS 230402, at *20.

Plaintiff's remaining arguments also carry no weight, and have been dismissed repeatedly by other courts. Among those, Plaintiff argues that an amicus brief submitted by the federal government in the Fifth Circuit *Guardian Flight* case should carry controlling weight before this court. But similar Plaintiff's have raised the same argument before other courts without success. *See, e.g.*, *Freeman Pain Inst.*, 2025 U.S. Dist. LEXIS 230402, at *20 ("[A]lleged deficiencies and inadequacies in the state of the enforcement mechanisms do not negate the fact that Congress did, indeed, create an administrative enforcement regime."); *Mod. Orthopaedics of NJ*, 2025 U.S. Dist. LEXIS 215824, at *31 (noting that the amicus brief does not "dispute the point that Congress did, in fact, create an administrative enforcement regime."). And the court in *Guardian Flight* did not find the brief persuasive. Accordingly, the NSA contains neither a private right to enforce the NSA, or a right to confirm IDR determinations through Section 9 of the FAA.

C. *Guardian Flight v. Aetna* Stands Alone Against a Rapidly Growing List of Decisions Dismissing Nearly Identical Causes of Action to Those Pleaded Here

The listing of courts that have dismissed causes of action nearly identical to those pleaded here has grown rapidly since Cigna filed its initial Motion. Despite the overwhelming volume of dismissals, Plaintiff cites *Guardian Flight v. Aetna* as its lone relevant support. But Plaintiff's reliance on *Guardian Flight v. Aetna* is misplaced. *First*, *Guardian Flight v. Aetna* represents an early NSA decision. The court lacked the benefit of the many courts that have since further studied the NSA's text and structure.[3] *Second*, the court in *Guardian Flight v. Aetna* "decline[d] to consider" the administrative enforcement scheme of the NSA because the parties to that case did not brief the issue. *Guardian Flight v. Aetna*, 789 F. Supp. 3d at 228 n.6. The court has since amplified this missing factor in its analysis. In a recent text order issued in *Guardian Flight v. Aetna* denying defendant's motion for interlocutory appeal, the Court stated, in part:

> If this case involved the NSA issue alone, I would certify an interlocutory appeal, because I found that issue to be a close call and the Fifth Circuit has now disagreed with me. *Guardian Flight, LLC v. Health Care Service Corp.*, 140 F.4th 271 (5th Cir. 2025). I note, however, that the Fifth Circuit had a different case before it than I did: Specifically, the Fifth Circuit relied in significant part on 42 U.S.C. Section 300gg-22 in finding statutory evidence that Congress had opted to provide for a "general administrative remedy," *id.* at 277, rather than a private cause of action to enforce payment of IDR awards. As I expressly noted in my opinion, however, "[t]he parties did not address 42 U.S.C. Section 300gg-22 in their briefs," and so "I decline[d] to consider whether this provision provides a method of enforcing [the] substantive rule in the NSAs Timing of Payment provision." 2025 WL 1399145 *8 n.6. It is possible I would have reached a different conclusion had that issue been briefed, but it

[3] Many courts have explicitly declined to follow *Guardian Flight v. Aetna* when reaching opposite conclusions. The courts in *Guardian Flight*, *T.V. Seshan M.D., Modern Orthopaedics of NJ*, *East Coast Advanced*, *Jeffrey Farkas, M.D.*, and *Reiter MD*, all noted disagreement with the *Guardian Flight v. Aetna* holding. *See Guardian Flight*, 140 F.4th at 277 n.5; *T.V. Seshan M.D.*, 2025 U.S. Dist. LEXIS 252293, at *16–17; *Mod. Orthopaedics of NJ*, 2025 U.S. Dist. LEXIS 215824, at *35–36; *E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *46–47; *Farkas, M.D.*, 790 F. Supp. 3d at 136–37; *Reiter MD*, 2025 U.S. Dist. 253333, at *12–13.

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> wasnt -- which diminishes the "conflict" between my opinion and that of the Fifth Circuit.

See Guardian Flight LLC v. Aetna Life Ins. Co., No. 3:24-cv-00680, ECF No. 295 (D. Conn. Sept. 30, 2025) (Order Denying Motion for Interlocutory Appeal).

Other courts have taken note of *Guardian Flight v. Aetna*'s more recent clarification. *See T.V. Seshan M.D.*, 2025 U.S. Dist. LEXIS 252293, at *26 n. 4 (referencing the court's September 30, 2025 order when reaching a different outcome (citing *Guardian Flight LLC v. Aetna Life Ins. Co.*, No. 3:24-cv-00680, ECF No. 295 (D. Conn. Sept. 30, 2025)). "Therefore, the analysis on administrative remedies in [*Guardian Flight v. Aetna*] is inapposite" to later decisions fully accounting for the NSA's administrative enforcement scheme. *Id.*

Courts that have fully considered the NSA's administrative enforcement provisions, including several within the Second Circuit, have universally found the existence of an administrative remedy as critical to the analysis of whether Congress intended to create a private right of action under the NSA. *See, e.g.*, *T.V. Seshan M.D.*, 2025 U.S. Dist. LEXIS 252293, at *26 ("[B]ecause the statute supplies an administrative remedy, it does not appear that Congress intended to imply a judicial remedy a well."); *E. Coast Advanced*, 2025 U.S. Dist. LEXIS 157911, at *47–48 (explaining that the NSA "supplies an administrative remedy for NSA violations—the IDR process—which is itself, by statute, subject to oversight and enforcement by [HHS]").

Lastly, in addition to *Guardian Flight v. Aetna*, Plaintiff cites two additional cases for support that federal courts have confirmed or enforced IDR determinations. (Compl. ¶ 69; Opp. Br. at 2, 7, 9–10.) But neither case supports Plaintiff's position on the legal arguments raised here. In both *GPS of N.J. M.D. v. Horizon Blue Cross & Blue Shield* and *Worldwide Aircraft Services, Inc. v. Worldwide Insurance Services, LLC* the courts in unpublished decisions denied petitions to vacate IDR awards and, when doing so, perfunctorily granted motions to confirm the awards. *See*

GPS of N.J. M.D. v. Horizon Blue Cross & Blue Shield, No. 22-06614 (KM), 2023 U.S. Dist. LEXIS 159460 (D.N.J. Sept. 8, 2023); *Worldwide Aircraft Servs. Inc. v. Worldwide Ins. Servs., LLC*, No. 8:24-cv-00840 (TPB), 2024 U.S. Dist. LEXIS 167943 (M.D. Fla. Sept. 18, 2024). But none of the parties to those cases contested the court's subject matter jurisdiction to confirm or enforce an IDR award, nor do the opinions suggest the courts otherwise considered the issue. *See Mod. Orthopaedics of NJ*, 2025 U.S. Dist. LEXIS 215824, at *34 ("The Petitioner in *GPS of New Jersey* was not petitioning the Court to confirm the IDR award—it was petitioning the court to vacate the award granted to Respondent.") Recent decisions have further found *GPS* inapplicable to the issues raised here. *See, e.g.*, *T.V. Seshan M.D.*, 2025 U.S. Dist. LEXIS 252293, at *19–20 (noting that "the *GPS* court did not grapple with any of the other arguments raised here as to why § 9 is inapplicable"); *Reiter MD*, 2025 U.S. Dist. LEXIS 253333, at *13 n.3 (finding *GPS* and *Worldwide* "not instructive"). In fact, in a later case involving the same parties as *Worldwide Aircraft Services. Inc. v. Worldwide Insurance Services, LLC*, the court found that it "lack[ed] subject matter jurisdiction to confirm or enforce an IDR award under the No Surprises Act" when the issue was affirmatively raised in that action. *See Worldwide v. Worldwide*, 2025 U.S. Dist. LEXIS 155594, at *6.[4]

For all these reasons, Plaintiff's reliance on *Guardian Flight v. Aetna* is misplaced. The Court should instead join the overwhelming majority of courts and determine that the NSA does not contain a private right of action to confirm or enforce and IDR determination.

[4] Moreover, Judge Barber, who authored the opinion in *Worldwide Aircraft Services Inc. v. Worldwide Insurance Services* that Plaintiff cites favorably, has since authored a more recent opinion also involving *Worldwide Aircraft Services Inc.* in which the court denied a petition to confirm the IDR proceeding "because the Court lacks authority to enforce or confirm the award." *Worldwide v. United*, 2025 U.S. Dist. LEXIS 233132, at *5.

III. THE COURT SHOULD DENY PLAINTIFF'S CROSS-MOTIONS TO CONFIRM AND FOR SUMMARY JUDGMENT

Plaintiff also cross-moves to confirm the IDR awards and for summary judgment, but these cross-motions should be denied because each fails on three basic points that Plaintiff ignores.[5]

First, for all the same reasons articulated in the Sections above, Plaintiff's Cross-Motions fail as a matter of law because the NSA does not provide a private right of action to seek judicial confirmation of IDR determinations under § 9 of the FAA.

Second, the NSA's protections, timing requirements, IDR process, and payment obligations are only triggered when a dispute over *the amount of payment for covered services* arises, not subsequent to an insurer's threshold determination that certain medical services are *not covered under the terms of the member's health plan*. *See* 42 U.S.C. §§ 300gg-111(a)(1), (a)(1)(C)(iv)(I), (b)(1), (b)(1)(C). *See also* 45 C.F.R. § 149.120(c)(3)(i). Here, because Cigna determined that CPT code 19364 was not medically necessary for Patient M.L.'s treatment and because Plaintiff submitted a claim for Patient M.P. for CPT codes 35703 LT, 35703 RT, 15002, and 32900 on August 9, 2024—well over 180 days after Patient M.P.'s January 7, 2022, date of service—Cigna denied coverage to each as neither claim was eligible for reimbursement under the terms of the Patients' benefits plans. Therefore, the NSA does not apply and Plaintiff cannot state a claim for violation of the statute.

Third, as set forth more fully in Cigna's moving brief, even assuming the NSA authorizes Plaintiff a right to petition for judicial confirmation of an IDR award, and even assuming § 9 of the FAA applies, Plaintiff is out-of-time to seek confirmation of DISP-878778. *See* Cigna's Br. at 29–32.

[5] Plaintiff's Cross-Motion for Summary Judgment improperly relies on inadmissible and unauthenticated documents. *See, e.g.*, *Barlow v. Conn.*, 319 F. Supp. 2d 250, 257 (D. Conn. 2004) ("Documents must be properly authenticated in order to be considered by the court at summary judgment stage.").

For all of these reasons, and as set forth more fully above, below, and in Cigna's moving brief, the Court must dismiss Plaintiff's Cross-Motions to Confirm and for Summary Judgment.

A. The NSA Only Applies to Covered Claims

The NSA demonstrates that its protections only apply when disputes over the amount of payment for certain ***covered*** services arise. *See* 42 U.S.C. §§ 300gg-111(a)(1),[6] (a)(1)(C)(iv)(I) (noting the NSA applies only "[i]f a group plan, or a health insurance issuer offering group or individual health insurance coverage, *provides or covers any benefits* with respect to services in an emergency department" and only for decisions regarding "an initial payment or notice of denial of payment") (emphasis added); *id.* at §§ 300gg-111(b)(1), (b)(1)(C) (noting the NSA applies only "[i]n the case of items or services (other than emergency services to which subsection (a) applies) *for which any benefits are provided or covered* by a group health plan or health insurance issuer offering group or individual health insurance coverage furnished to a participant, beneficiary, or enrollee of such plan or coverage by a nonparticipating provider" and only for decisions regarding "an initial payment or notice of denial of payment") (emphasis added). *See also* 45 C.F.R. § 149.120(c)(3) ("The plan or issuer must . . . determine whether the items and services are covered under the plan or coverage and, *if the items and services are covered, send to the provider an initial payment or a notice of denial of payment.*") (emphasis added). The statutory references to "denial of payment" in these contexts refer to a refusal to pay a "a total plan or coverage payment directly to such provider or facility," not the insurer's determination that medical services were

[6] It bears noting that 42 U.S.C. § 300gg-111(a) relates to emergency services, *see* 42 U.S.C. § 300gg-111(a) ("Coverage of Emergency Services"), while 42 U.S.C. § 300gg-111(b) relates to nonemergent, elective services, *see id.* § 300gg-111(b) ("Coverage of non-emergency services performed by nonparticipating providers at certain participating facilities"). The Complaint does not specify whether the claims at issue concern emergency or inadvertent services. *See generally* Compl.

not covered under the terms of the member's health plan. 42 U.S.C. § 300gg-111(a)(1)(C)(iv)(II). *See also id.* at § 300gg-111(b)(1)(D).

As explained in Cigna's moving brief, the NSA protects health care patients from surprise medical bills incurred after they receive medical services from out-of-network health care providers or non-emergent medical services from out-of-network providers at in-network health care facilities. *See generally* Cigna's Br. Instead of billing members directly, the providers must first submit their claims directly to the members' health plans. 42 U.S.C. §§ 300gg-111(a)(1)(C)(iv)(I), (b)(1)(C). Critically, the NSA establishes a non-judicial IDR process when out-of-network providers and insurers cannot agree on payment for ***covered*** medical care rendered to the protected member. *See id.* at § 300gg-111(c)(2) ("Independent Dispute Resolution Process Available in Case of Failed Open Negotiations.") Therefore, the NSA's framework necessitates that the medical services in question be ***covered*** under the terms of the member's health plan because the statute contemplates a determination of payment for such services, not a determination of coverage. *See* Key Responsibilities for Group Health Plans and Health Insurance Issuers Under the No Surprises Act, https://www.cms.gov/files/document/nsa-key-responsibilities-plans.pdf (Jan. 2025) ("Note: The No Surprises Act surprise billing protections do not apply if the items or services provided would not have been covered by the person's health plan or insurance, even if they had been provided in-network."); No Surprises Act Overview of Key Consumer Protections, https://www.cms.gov/files/document/nsa-keyprotections.pdf (Nov. 2023) ("[T]he No Surprises Act protects people who are covered under group health plans," and does not apply "[w]hen the items or services provided are **not** covered by the person's health plan or insurance.").

It is undisputed that the NSA's surprise billing protections do not apply to the coverage determinations Cigna made to CPT codes 19364, 35703 LT, 35703 RT, 15002, and 32900 because

even if those services had been provided in-network, the Patients' governing health plans explicitly state that medical necessity and timeliness are grounds to deny coverage to *any* claim. Declaration of Jose Farias ("Farias Decl."), ¶¶ 3–4, 13–14, Ex. A at 69, Ex. B at 10; Additional Material Facts ("AMF"), ¶ 1–2, 9–10. Because Cigna's denials relate to coverage, not reimbursement, Farias Decl. ¶¶ 9, 20, Ex. B at 3, Ex. D at 3; AMF ¶¶ 6, 15, the Court must dismiss Plaintiff's Cross-Motions to Confirm and for Summary Judgment.

1. Coverage Denials Fall Outside the Scope of the NSA

When an insurer denies coverage for medical services from out-of-network health care providers or non-emergent medical services from out-of-network providers at in-network health care facilities, it makes a determination that the services provided are not benefits covered under the terms of the member's health plan. This is fundamentally different from when an insurer acknowledges that those medical services are covered but disputes the amount of payment owed to the out-of-network provider. The NSA's protections and procedures are designed for the latter, not the former.

The NSA's provision directing parties to negotiate a payment determination "for which a payment is required to be made by the plan or coverage" during the IDR process further demonstrates that Congress contemplated payment disputes for ***covered*** services only. 42 U.S.C. § 300gg-111(c)(1)(A). If the parties agree on a payment amount during the open negotiation period, "such amount shall be treated for purposes of subsection (a)(3)(K)(ii) as the amount agreed to by such parties for such item or service." *Id.* at § 300gg-111(c)(2)(B). Such framework cannot apply when the fundamental dispute is whether any payment obligation exists due to lack of coverage.

Here, Cigna determined that the out-of-network medical services Plaintiff provided to the Patients were not benefits covered under the terms of their governing health plans. Farias Decl.

¶¶ 7–8, 18–19, Ex. B at 3, Ex. D at 3; AMF ¶¶ 4–5,13–14. Therefore, Cigna's coverage determinations do not relate to any claim "for which a payment is required to be made by the plan or coverage," 42 U.S.C. § 300gg-111(c)(1)(A), and thus fall outside the scope of the NSA.

2. The NSA Does Not Apply to the IDR Awards at Issue

The NSA's comprehensive framework for addressing payment disputes between out-of-network providers and insurers applies only when medical services are ***covered*** under the terms of a member's health plan. An insurer's denial of coverage, however, represents a threshold determination that falls outside the scope for the NSA's payment dispute resolution mechanisms. Therefore, coverage denials do not trigger the NSA's protections, timing requirements, IDR process, or payment obligations.

Cigna denied the underlying claim for IDR determination DISP-878778 on the basis of medical necessity and pursuant to Patient M.L.'s health benefits plan. Farias Decl. ¶¶ 8–9, Ex. A at 58, 69 (outlining and defining medical necessity determinations), Ex. B at 3 (denying CPT code 19364 as not medically necessary); AMF ¶ 5. On October 9, 2023, following Patient M.L.'s April 14, 2023, medical procedure, Plaintiff sent Cigna a claim in the amount of $196,000.00 for CPT code 19364, which Cigna identified as Claim No. 4682328298918. Farias Decl. ¶ 6; AMF ¶ 3. On October 25, 2023, Cigna processed Claim No. 4682328298918 and issued an Explanation of Benefits ("EOB"), which it sent to Plaintiff. Farias Decl. ¶ 7, Ex. B; AMF ¶ 4. As indicated on the EOB, Cigna denied CPT code 19364 for the following reason: "Based on the information we have available, the services or supplies on this claim are not medically necessary." Farias Decl. ¶ 8, Ex. B at 3; AMF ¶ 5. Cigna's denial of CPT code 19364 relates to coverage, not reimbursement. Farias Decl. ¶ 9, Ex. B at 3; AMF ¶ 6.

Cigna also denied the underlying claim for IDR determinations DISP-2001877, DISP-2001876, DISP-2001874, and DISP-2001871 on the basis that Plaintiff failed to timely submit

such claim and pursuant to Patient M.P.'s health benefits plan. Farias Decl. ¶¶ 19–20, Ex. C at 10, (identifying the procedures for "Timely Filing of Out-of-Network Claims"), Ex. D at 3 (denying CPT codes 35703 LT, 35703 RT, 15002, and 32900 as late); AMF ¶ 14. On August 9, 2024—945 days *after* Patient M.P.'s January 7, 2022, medical procedure—Plaintiff sent Cigna a claim in the amount of $45,067.99 for CPT codes 35703 LT, 35703 RT, 15002, and 32900, which Cigna identified as Claim No. 4682422201002. Farias Decl. ¶ 16; AMF ¶ 11. On August 24, 2024, Cigna processed Claim No. 4682422201002 and issued an EOB, which it sent to Plaintiff. Farias Decl. ¶ 18, Ex. D; AMF ¶ 13. As indicated on the EOB, Cigna denied CPT codes 35703 LT, 35703 RT, 15002, and 32900 for the following reason: "This out-of-network claim was sent too late. Therefore, the claim was denied and you must pay the claim. If you have proof that you sent it on time, please resubmit the claim along with the proof to the address on the back of your CIGNA ID card. For more information on claim-filing deadlines please refer to your plan booklet." Farias Decl. ¶ 19, Ex. D at 3; AMF ¶ 14. Cigna's denial of CPT codes 35703 LT, 35703 RT, 15002, and 32900 relate to coverage, not reimbursement. Farias Decl. ¶ 20, Ex. D at 3; AMF ¶ 15.

It is undisputed that Cigna denied coverage for CPT codes 19364, 35703 LT, 35703 RT, 15002, and 32900. *See* Farias Decl. ¶¶ 8–9, 19–20, Ex. B at 3, Ex. D at 3; AMF ¶¶ 5–6, 14–15. Cigna determined that the underlying medical services provided to the Patients were not covered under the terms of their health plans and issued explanations as to why those claims were not covered. *See* Farias Decl. ¶¶ 7–8, 18–19, Exs. B, D; AMF ¶¶ 4–5, 13–14. Cigna never rendered initial payments or issued notices of denial of payment for those claims because each CPT code was determined to be ineligible for coverage. Farias Decl. ¶¶ 10, 21; AMF ¶¶ 7, 16.

Although Plaintiff suggests that Cigna's EOBs constitute denials of payment (as opposed to explanations of coverage determinations),[7] and argues that the two claims are subject to the NSA, that is not so. Cigna denied coverage for each claim based on the terms of the Patients' health benefit plans. That coverage determination, a threshold inquiry, is entirely separate from a payment determination. In other words, those denials of coverage do not implicate a payment determination, and therefore does not trigger the protections and procedures established under the NSA. Therefore, because Plaintiff did not dispute the amount of payment for covered medical services, the underlying claims were not subject to IDR determinations under the NSA.

Because Cigna's coverage denials do not trigger the NSA's protections, timing requirements, IDR process, or payment obligations, Plaintiff's Cross-Motions to Confirm and for Summary Judgment should be denied.

B. Plaintiff is Time Barred From Seeking Confirmation of DISP-878778

Even assuming Plaintiff could obtain judicial confirmation of an IDR determination under § 9 of the FAA—which it cannot—Plaintiff is barred from obtaining judicial confirmation of the IDR determination for Patient M.L. because the Complaint is untimely. Farias Decl. ¶ 12; AMF ¶ 8. Section 9 of the FAA sets a clear deadline to petition for confirmation of an arbitration award—within one year after the award is made. *See* 9 U.S.C. § 9. But Plaintiff did not file this action within one year from the date when the CIDRE issued the underlying IDR proceeding for services provided to Patient M.L.

The Court should treat Plaintiff's failure to respond to Cigna's timeliness arguments in its moving brief, *see* Cigna's Br. at 29–32, as unopposed and abandoned. *See, e.g.*, *Martinez v.*

[7] The statutory references to "denials of payment" refer to an insurer's refusal to pay "a total plan or coverage payment directly to such provider or facility," not the insurer's determination that medical services were not covered under the terms of the member's health plan. 42 U.S.C. § 300gg-111(a)(1)(C)(iv)(II); *see also id.* at § 300gg-111(b)(1)(D).

Malloy, 350 F. Supp. 3d 74, 94 (D. Conn. 2018) (dismissing claim after deeming plaintiff's failure to oppose Fed. R. Civ. P. 12(b)(6) argument as "abandoned"). It is undisputed that the clock started ticking for purposes of the statute of limitations on March 6, 2024, the date the IDR determination was made. Because Plaintiff did not commence this action by March 5, 2025, Plaintiff is barred from obtaining an order confirming DISP-878778. Thus, even assuming the FAA applies—which it does not—Plaintiff cannot obtain confirmation of DISP-878778 related to reimbursement for surgical services provided to Patient M.L. because 386 days passed between the March 6, 2024, IDR determination for DISP-878778 and Plaintiff's March 27, 2025, Complaint. Farias Decl. ¶ 12; AMF ¶ 8.

CONCLUSION

For the reasons set forth above as well as in Cigna's Motion, the Court should grant Cigna's Motion to Dismiss Plaintiff's Complaint in its entirety and with prejudice, and deny Plaintiff's Cross-Motions to Confirm and for Summary Judgment.

Dated: January 12, 2026
Newark, New Jersey

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ORAL ARGUMENT REQUESTED